

Briefing Paper

The Protection of Geographical Indications in India: Issues and Challenges

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Introduction

A geographical indication (GI) acts as a mechanism that helps producers differentiate their products from competing products in the market and enables producers to build a reputation and goodwill around their products that will fetch a premium price. A number of studies attest to the potential economic benefits of GI registration. A consumer survey undertaken in the European Union in 1999 found that 40 per cent of the consumers would pay a premium of 10 per cent for origin-guaranteed products (WTO, 2004). Despite the fact that the GI concept is yet to mature in India, an United Nations Conference on Trade and Development (UNCTAD) study has revealed that GI registered agricultural products can fetch a price premium of 10–15 per cent whereas for non-agricultural products it would be to the tune of 5-10 per cent (Das, 2008).

The concept of geographical indication has its origin in 19th century Europe and has considerably evolved since then. The current international framework is laid down in Article 22 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement which mandates member countries to provide for the protection of all GIs, where the obligation is for members to provide the 'legal means for interested parties' to secure protection of their GIs. The TRIPS defines GIs as 'indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality,

reputation or other characteristic of the good is essentially attributable to its geographical origin' (Article 22).

Under Article 22, the scope of protection is composed of three aspects:

- Protection against the use of indications that mislead the public or are deceptive;
- Protection against the use of indications in a manner that are acts of unfair competition;
- Refusal or invalidation of trademarks that contain or consist of indications, where it may mislead the public.

Article 22.2.a prohibits the use of indications (words, phrases, images or symbols) that will mislead/ deceive the public about the good's geographical origin. Article 22.2.b prohibits any use of GI that constitutes an act of unfair competition as defined in Article 10bis of the Paris Convention. The language of Article 10bis indicates that in order to prohibit such acts as acts of unfair competition, it has to be established that their use is misleading or will create confusion to the public, and that damages result or there is likelihood of damages resulting from such use of GI. As per Article 22.3 of TRIPS, registration of GI as trademarks shall be refused or invalidated at the request of an interested party, if their use is likely to mislead the public as to the true place of origin. Most countries including developing countries disallow the registration of geographical names as trademarks, unless these have attained secondary meaning.

The TRIPS Agreement provides for two levels of protection for GI. What Article 22 provides is the basic level or a minimum standard of protection whereby all GI must be offered protection against use which would deceive the public or constitute an act of unfair competition. The second kind of protection, in Article 23, is a higher standard of protection specifically for wines and spirits. This article confers protection on GIs on wines and spirits per se or in absolute terms, without requiring any test of confusion or likelihood of deception to be met. In the special case of wines and spirits, Article 23.1 of TRIPS prohibits the use of translations of GI or attachment of expressions such as 'kind', 'type', 'style',

'imitation' to products not originating from the place indicated, even where the true origin is clearly indicated. Thus, 'Champagne style sparkling wine, Made in the USA' would be prohibited even though this is evidently not misleading.

The Legal framework in India

As a party to the TRIPS Agreement, India is required to protect GI and hence in order to fulfill that obligation, the Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted. It may also be noted that India felt that some of its products have high potential to benefit from GI registration and it was necessary to put in place a comprehensive legislation for registration and for providing adequate protection for GI. For unless a geographical indication is protected in the country of its origin, there is no requirement under the TRIPS Agreement for other countries to extend reciprocal protection. The main benefits which accrue from registration under the Act are as follows:

- Confers legal protection to GI in India;
- Prevents unauthorized use of a registered geographical indication by others;
- Enables seeking legal protection in other WTO member countries.

From the perspective of a developing country, one of the best features of the Indian Act is the comprehensive definition given of GI, whereby agricultural, natural and manufactured goods all come under the ambit of GI. This is especially important in the Indian context considering the wide variety of goods that is deserving of protection ranging from agricultural products like Basmati, Darjeeling tea to manufactured goods such as Banrasi sari, Kolhapure chappals, Chanderi silk etc. Section 11 of the Act provides that any association of persons, producers, organization or authority established by or under the law can apply for registration of a GI. Another important aspect of the Act is the possibility of protecting a GI indefinitely by renewing the registration when it expires after a period of ten years. In the domestic context, the Indian Act has tried to extend the additional protection reserved for

wines and spirits mandated by TRIPS to include goods of national interest on a case to case basis. Section 22.2 of the Act endows the Central Government with the authority to give additional protection to certain goods or classes of goods. This is especially important in the developing country context considering that we may not have wines and spirits to protect like the West but other exotic niche products like teas, rice etc.

Section 25 of the Act, by prohibiting the registration of a GI as a trademark, tries to prevent appropriation of a public property in the nature of a geographical indication by an individual as a trademark, leading to confusion in the market. Also, according to section 24 of the Act, a GI cannot be assigned or transmitted. The Act recognizes that a GI is a public property belonging to the producers of the goods concerned; as such it cannot be the subject matter of assignment, transmission, licensing, pledge, mortgage or any contract for transferring the ownership or possession.

India's Experience with GI Protection

Since the first Indian GI was registered in 2004, 172 GIs have been registered with the GI Registry of India. Of these, more than half (64 per cent) are handicrafts, more than one fourth (26 per cent) are agricultural products, and the remaining are food and manufacturing products (Figure 1).

The trend of GI registration has been mostly upward with the maximum number of products registered in the year 2008 – 2009. While handicrafts have been the most registered GIs consistently, agricultural and manufactured products are increasingly being protected under the GI Act over the past few years (see figure 2) Food products, a more recent addition in the registered GI basket of India, was first granted protection in 2008 – 2009 when Dharwad Pedha from Karnataka was granted the status of a registered GI product. The recent increase in manufactured products being registered as GI can be partially attributed to more foreign products being registered at the Indian GI Registry.

In terms of geographical distribution of GIs in India, most GIs have been registered from the southern

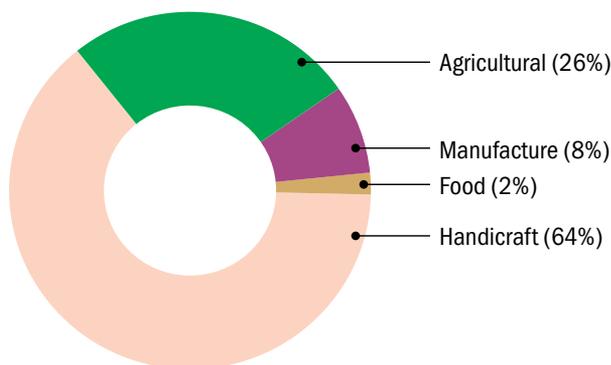


Figure 1 GIs registered in different categories

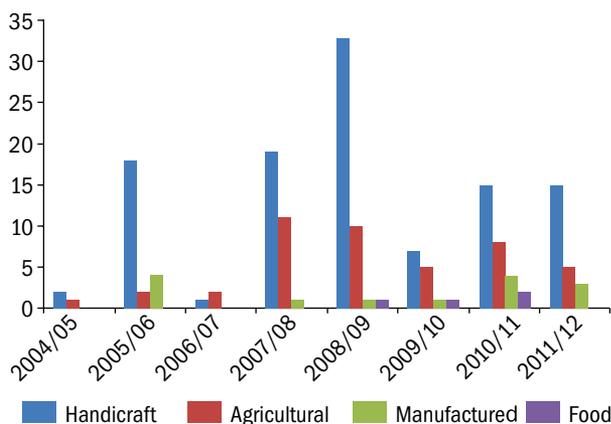


Figure 2 Registrations in different categories from 2004-12

states. The state of Karnataka has been the forerunner in registration of GIs followed by the states of Andhra Pradesh, Kerala and Tamil Nadu. The spread of GI recognition is concentrated in the southern states. Products from other states are getting registered now. At the same time many states, which have several traditional varieties of agricultural products or handicrafts, are not forthcoming in applying for GIs. There are only three GIs from all of north east India and none from Uttarakhand. The states of Punjab and Haryana have no GI either except for a joint GI on Phulkari embroidery along with Rajasthan. Phulkari is the only GI in India which covers more than one state.

Since 2009, 8 foreign (7 manufactured and 1 food) products have been accorded the status of registered GI under the Indian Act. These are Champagne and Cognac from France, Scotch Whisky from the United Kingdom, Napa Valley wines from the United States of America,

Douro wine from Portugal, Peruvian Pisco from Peru and Prosciutto di Parma from Italy.

Impacts of GI registration in India: Some cases

A number of observers point out that of all the different types of intellectual property rights, GI may be more amenable to the particular context of developing countries. GIs may especially facilitate protection of the collective rights of the rural and indigenous communities in their indigenous knowledge, ensuring that the entire community which has preserved the knowledge and has passed it on with incremental refinement over generations, stand to benefit from the knowledge and that this is not locked up as the private property of one individual (Sahai and Barpujari, 2007). Other advantages of GIs are that the knowledge remains in the public domain, the scope of protection is limited to controlling the class and/ or location of people who may use the protected indication and the rights can potentially be held in perpetuity as long as the product-place link is maintained (Commission on Intellectual Property Rights, 2004). Also, holders of a GI do not have the right to assign the indication, thus, preventing its transfer to non-locale producers.

Evidence on the socio-economic impacts of GIs in the Indian context are, however, limited although anecdotal evidence suggests that GIs have significant implications for producers in developed and developing countries (Jena and Grote, 2007). Interestingly, the collective nature of GIs also brings to the fore significant collective action related problems across various stages of organization and governance (Das, 2009). For example, a group of producers may take the initiative in the GI registration process, while others not willing to join initially may join later thereby attempting to free-ride on the efforts of the forerunners. In India, there are many GIs that are registered in the names of some central or state government departments or bodies, yet there is no homogeneity among those initiatives and involvements across states. A number of studies have also found that GIs could lead to exclusion of many from enjoying the benefits (Gopalakrishnan et.al (2007), Rangnekar (2009)). Firms with better bargaining positions may also end up making

disproportionate share of the economic value generated from securing protection (Rangnekar, 2004).

It is against this backdrop that our study has tried to assess the situation on the ground with respect to a number of registered GIs, through indepth, field level case studies as well as primary survey based on a standard questionnaire prepared for the purpose. Some of these case studies include Muga silk of Assam, Banaras brocades and saris, Malabar pepper and Vazhakulam Pineapple, all of which are registered GIs.

Muga Silk of Assam

Muga silk is a registered GI from the state of Assam. Historical evidence suggests that Assam's silk industry had reached the pinnacle of perfection by the 7th century A.D. Banabhatta, the author of Harshacharita informs us that king Bhaskara Varma of Kamarupa (ancient Assam) presented to Harshavardhana silken towels as "silken and pure as the autumn moon's night..."(cited in Sahai and Barpujari, op.cit.). In the present day, muga silk constitutes the state's most popular export product after Assam tea. The Patent Information Centre of the Assam Science Technology and Environment Council (ASTEC) secured registration for muga in 2006, which is incidentally the first registered GI from the north-eastern region. While ASTEC is the registered proprietor of the muga GI, till date, there are no registered users. One to one interviews with weavers and silk traders in the town of Sualkuchi revealed very low awareness about the GI protection of muga. While the price of muga has been rising over the last few years, that has little to do with GI registration. The reason for the high prices of the muga yarn, according to the various stakeholders interviewed, are diminishing area under muga cultivation owing to rubber cultivation, diseases at the cocoon stage, loss incurred due to the outdoor nature of muga rearing, and so on. Nevertheless, higher prices have not been able to encourage the farmers to hold on to muga cultivation. As a result, muga has become almost three times more expensive, compared with other similar varieties of silk. Apparel with 100 per cent muga yarn is rarely produced these days, except to cater to the state emporiums, or for special orders. Muga

is often blended with imported tussar silk from China or with other indigenous silk yarn such as pat. Meanwhile, as observed in the field, power-loom is getting increasingly popular for muga weaving, dealing a further blow to handloom weavers. In an interview, an applicant for registered use of muga observed that fabric woven on the power-loom has certain advantages and could be the only way out for entrepreneurs like him as many weavers are leaving the profession owing to un-remunerative wages. Regarding the setting up of a quality control and inspection mechanism, as required by the law, ASTEC has proposed employing the services of the Seri Bio Lab of the Institute of Advanced Study in Science and Technology, Guwahati, for quality control. An inspection body is yet to be constituted. Hence, at this stage, even after six years of registration, GI in muga cannot give any guarantee of quality or authenticity.

Banaras brocades and saris

'Banaras brocades and saris' secured registration under the GI Act in September 2009, with the application filed by nine organisations viz. Banaras Bunkar Samiti, Human Welfare Association (HWA), joint director industries (eastern zone), director of handlooms and textiles Uttar Pradesh Handloom Fabrics Marketing Cooperative Federation, Eastern UP Exporters Association (EUPEA), Banarasi Vastra Udyog Sangh, Banaras Hath Kargha Vikas Samiti and Adarsh Silk Bunkar Sahkari Samiti. The weaver community predominantly constitutes poor Muslims and Dalits and the structure of production is based on a hierarchy of kothdars (wholesale dealers), master weavers and other weavers. With the objective of understanding the actual impact of registration on the ground level, TERI researchers conducted a multi-stakeholder consultation at Varanasi interacting with registered users, Banarasi Sari traders, *bunkars* (weavers), government officials, local buyers, NGO representatives, cottage manufacturing units etc. The consultations indicated that the Banarasi sari industry is impacted by a host of variables in terms of raw material and labour issues, the socio-economic aspects of the region, and, to some extent, the pitfalls of excessive liberalisation and legislation (Dwivedi and

Bhattacharjya, 2012). The changing economic and market situation has resulted in reduced income for weavers who cannot even meet their basic needs, causing malnutrition and widespread poverty throughout the traditional weaver community. Such destitution and despondency among the weavers has forced them to commit suicide or has precipitated employment shifts, as evidenced by MGNREGA (Mahatma Gandhi National Rural Employee Guarantee Act) benefits. It could be gathered from the fieldwork that the promise of geographical indication protection has not curbed the menace of fakes. Machine-based cheap product imitations continue to be sold. Cheap raw material imports have led to the sale of what are known as *Kela saris*, in the name of Banarasi saris. These use banana tree resin to create threads which are then polished to give the look of silver or gold thread. Chinese imitation saris, pegged at much lower prices, are flooding the market. Moreover, there is a tenfold rise in the number of operating power-looms in the district of Varanasi itself, although certain other studies put higher estimates. Most power-loom owners have been producing cheap imitation products in large numbers to meet the growing demand, with computerised designs. Enforcement under the legal regime is frustrated further through absence of will on the part of GI holders to take action against the imitators. Despite the stakeholders being aware of the deleterious impact of sales of fake saris, complex market dynamics enforces silence among all concerned.

Malabar pepper

Malabar pepper is famous for its quality. It is classified under two grades – garbled and un-garbled. History is replete with instances of foreigners coming to the Malabar Coast to trade in Indian spices in general and pepper in particular. It is stated that the exorbitant price of pepper during the middle ages, a trade which was monopolized by the Italians, forced the Portuguese to seek a sea route to reach India. Pepper is used as a spice and it has also got medicinal properties. Malabar pepper is cultivated in the geographic regions comprised in the Malabar region of the erstwhile Madras Presidency. Now these areas comprise in the states of Kerala, Karnataka

and Tamil Nadu. Malabar pepper accounts for around 25 per cent of the entire world's supply of pepper. This pepper is unique for its sharp, hot and biting taste. Highly aromatic, with a distinctive fruity bouquet, it has the perfect combination of flavour and aroma. In order to protect the brand value of Malabar pepper, the Spices Board applied for a GI registration and after completing the formalities the registration was granted.

As pepper is exported in huge quantities, there was a feeling that the GI tag would give better legal protection against counterfeit products, more visibility to the brand etc. None of the respondents interviewed by TERI researchers were aware of any infringement action initiated against any of the counterfeit producers. There was also a general feeling that it is the traders who reap benefit out of the GI tag and not the farmers. The general refrain was that farmers do not get any extra benefit from the GI tag, which is also corroborated by findings from the TERI survey discussed later. The general mood in the sector at the time of field visit was a worry over the declining price in pepper. There were demands that there should be a complete ban on future trades in pepper.

Vazhakulam Pineapple

There was considerable interest shown among the academia and practicing lawyers about the GI tag for Vazhakulam Pineapple. Some interviews were conducted by TERI researchers as a result of this. Pineapple is produced as a commercial fruit crop in India. The main pineapple producing states are Kerala, West Bengal, Assam and Tripura. Vazhakulam, known as the Pineapple City, is located in Muvattupuzha taluka of Ernakulam district. The pineapple cultivation in that region started in the forties. It is a variety called Mauritius which is cultivated in this region. The pineapple produced in this region has a distinct taste. It is very sweet and not very juicy. Because of these features, there is a huge demand for Vazhakulam Pineapple.

From 1985 onwards, many farmers started taking up large scale commercial cultivation of this pineapple. Because of less juice content in the fruit, this variety of pineapple is mainly consumed as a fruit. These distinctive features were noticed in pineapples grown in an area

roughly falling within 60 kms in and around Vazhakulam. These areas fall under the revenue districts of Ernakulam, Idukki, Kottayam and Pathanamthitta. However 90 per cent of the pineapple is produced in Vazhakulam area only. The farmers attribute the distinctive taste of the pineapple to the soil in the region. The main demand for Vazakkulam pineapple comes from the state of Kerala only. The export market is mainly the Gulf countries. As the fruit has to be consumed within 4 -5 days of harvesting, exporting does not make much of commercial sense. In order to protect the brand name, GI application was jointly filed by the Pineapple Farmers Association, Nadukkara Agro Processing Company Ltd. (NAPCL), and the Kerala Agricultural University.

The Pineapple Farmers Association is a registered society under the Charitable Societies Act. It was formed in 1990 mainly to address the marketing issues. More than 500 pineapple farmers are members of this Association. The main objectives of the association are: to unite and strengthen the pineapple farmers; to create awareness on farming and marketing issues; to provide assistance in seeking financial and technical help from various government and non-government agencies; and to engage in promotion activities. The Nadukkara Agro Processing Company Ltd. is a public limited company with a shareholding pattern of 70 per cent held by farmers and 30 per cent by the state of Kerala. NAPCL is involved in the production of many pineapple based products like pineapple juice, pineapple fruit candies among others. The Kerala Agricultural University was instrumental in providing the scientific details needed for the GI registration and is involved as the inspection body to regulate the quality standard parameters.

The purpose of going for a GI registration was for brand value. No case of infringement has come to the notice so far. The office bearers of the farmers association were very candid in explaining that the major benefit of the GI registration was the greater visibility of the brand. Most of the farmers are big farmers who have taken land for lease. The lease land mainly comes from the rubber plantations, during their replantation time. In the first 3-4 years of replantation, pineapple is cultivated as

an inter crop. These plantations would stretch from 50 – 100 acres. It is cultivated as an intercrop in coconut farms too. There are farmers who have resorted to pineapple cultivation as the main crop. There was a feeling among the representatives of the farmers’ association that as GI is intended to help the marketing of the product as it brings in more brand visibility, the farmers are not directly benefitted. The general feeling to be gathered after interaction was that direct benefit for farmers was not seen as the purpose of GI tag.

Findings from field survey

The case studies were sought to be substantiated through a survey conducted by TERI for three registered GI- Banarasi sari, Malabar pepper and Bikaneri Bhujia, on the basis of a standard questionnaire prepared especially for the purpose. The survey covered in all 60 respondents drawn from producers, traders, representatives of government agencies and other stakeholders.

The findings from the survey indicate that among the present users of the registered GI, only 31.11 per cent are registered users under the GI Act, with the highest number of registered users being there for Banarasi sari (65 per cent) followed by Bikaneri bhujia (59 per cent) and Malabar pepper (7 per cent). The survey indicates that for the GIs surveyed, the major export destinations are Europe followed by the USA, UAE and Australia. However, the volume of international sales is quite low, averaging about 14 per cent of the total volume of sales for the GIs surveyed. The survey also indicated as far as sale is considered, much of the sale of bikaneri bhujia happens through retail (80 per cent), while in the case of Malabar pepper, direct sales constitute 57 per cent and wholesale 36 per cent. In the case of Banarasi sari, 50 per cent is through direct sales; retail sale constitutes 20 per cent and exhibitions and wholesale account for 15 per cent. The survey shows that 47.46 per cent of the registered users approached the registered owners of the GIs, which in most cases have been government and non-governmental associations and agencies (referred to as the association for the sake of convenience) for obtaining registered user status. For them, the main motivation for

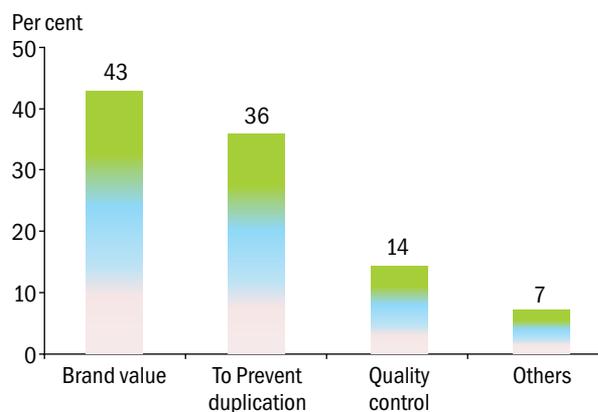


Figure 3 Motivation for securing registered user status

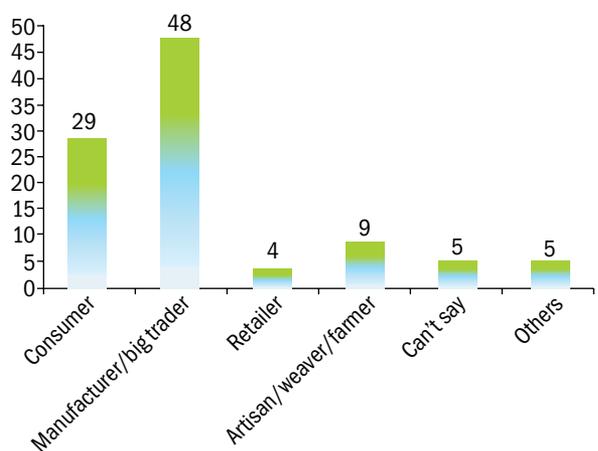


Figure 4 Benefits of registration

seeking user status have been enhancement of brand value (43 per cent) and prevention of duplication (36 per cent). Among the registered users who were approached or encouraged by the association to go for registration, the main motivating factors have been expectations to enhance brand value (for 36 per cent of the respondents), prevent duplicate products (36 per cent), to retain product originality (18 per cent), while others have been inspired and motivated by the association (9 per cent). However, the survey indicates that none of the registered users were consulted by the registered owners of the GIs prior to the application process of the GI itself. Among the respondents surveyed, only 21.43 per cent claim enhanced profit post registration. However, among the other changes observed

post-registration, 33 per cent claim increase in product demand, while another 33 per cent say that it has led to revenue increment while 17 per cent of the respondents claim that registration has led to decrease of duplicates and enhanced brand value respectively.

About 86 per cent reported that costs have not increased post registration. Only 2 per cent responded in the affirmative about their industry enjoying unique subsidy benefit at any or different points in the value chain, with 89 per cent claiming that this limited subsidy benefit is on account of GI registration. About 51 per cent of the respondents pointed to the existence of big players in the GI products. Respondents believed that the benefits of registration has accrued mostly to manufacturers/ big traders in the sector (48 per cent), with only 9 per cent believing that benefits have actually gone to the artisan/ weavers/ farmers, actually producing the GI. About 48 per cent of the respondents surveyed claim that some bonafide traditional producers of their GI product have been excluded from the benefits of GI or authorised user registration.

The Way Ahead

An analysis of the legal framework as well as experiences with registered GIs, both from the case studies and the survey indicate the presence of a number of challenges. An important dimension of GI is that it does not protect knowledge or technology as such. It only protects the name or indication. This essentially means that the famous Banarasi sari can be produced anywhere in the world but it cannot be named 'Banarasi sari'. For a price-conscious consumer, it might not make much sense to buy GI certified products at a premium, if the same product is available elsewhere. Some of the other challenges are given below.

The question of beneficiaries

One of the main problems is the ambiguity in the definition of the term 'producer' in the legislation which does not distinguish between real producer, retailer or dealer. As a result of this, the benefits of the registration may not percolate down to the real producer as is seen in the case studies of muga silk and the Banarasi

sari and as also attested to by the respondents of our survey.

Appropriate Identification of products

Currently, government activities related to GI is concentrated mostly on registering GI products where the state governments are acting in haste. Identification of GI based products and their registration is happening without adequate due thoroughness. Groups filling for GI registration do not assess the commercial prospect of a GI product in the domestic and international markets or the potential of such registration in contributing towards the future growth of the product as well as the socio-economic implication for the communities involved in the supply chain.

Defining the characteristics

As Rangnekar's study of Goa feni (2009) elucidates, GI status could lead to the creation of 'clubs' (connoting exclusion of many others), with the use of a GI permissible only by those who adhere to the specification, thus, being similar to club rules. Gopalakrishnan et.al (2007) also observes that as of now, traders enjoy more economic benefits than the actual producers of GIs and hence, recommends that the right to use the registered GIs must be confined to the actual producers of the GIs from the identified geographical area and only with their permission, the traders and others involved in the trade could use the GIs.

Defining geographical boundaries

Defining the exact geographical boundaries of a product is often a big challenge, particularly in the context of non-agricultural products. For example, Banarasi saris are woven not just in the city but in the rural areas of the same district as well as in some neighbouring districts. Similarly, Baluchari sari, another GI registered product, originated in a village called Baluchar in the district of Murshidabad. But the village does not exist anymore as it has been swallowed by a river. With time this form of weaving was almost lost and was revived later. However, in the process of revival, weavers of Bishnupur in the district of Bankura played a larger role than the weavers in Murshidabad. These two

places are about 200 Kms apart. Hence, the question is which region should be the legitimate one in GI registration. Since the state government agencies have taken a lead role in the process of registration, they have tended to include the entire state for registration for GI which may not be appropriate.

Post-registration follow-up

Moreover, post-registration, there is need for promotion and continuous awareness building particularly among the consumers (AIACA, 2011). There currently exists no standard procedures for consultation before registration and it is most probable that pre- application process may end up in inadequate consultations with various stakeholders including retailers. While marketing and promotion efforts may need sustained commitment of resources, yet there is no guarantee of such success particularly for new GI products. There is also constant need for building capacity and awareness about GIs among various stakeholders including consumers, as highlighted by respondents in our survey. All these issues will need to be addressed for GI registration to serve the desired goals of providing an assurance of quality to the consumers and socio-economic benefits to the producers.

Registration in foreign countries

The challenges associated with GI protection also include technicalities involved in the registration process in various foreign countries, high expenses incurred in appointing a watch-dog agency to get information on misappropriation, and financial resources that are needed for pursuing legal battles, etc. (Das, 2008). Sometimes, specifying the production processes, uniqueness and geographical information tends to be very technical and expensive. In some countries, GI registration can be given only to an association of producers, whereas in India most of the GIs are owned by government agencies.

Involvement of stakeholders

As our survey indicates, primary stakeholders like producers, traders, farmers, artisans etc. are not consulted

at the pre-application stage, with all registered users surveyed claiming that they have not been consulted. As a result of this, the real objectives of the Act are not met leading to registration that may fail to achieve the desired outcome. This is important to deal with some of the challenges like identifying products, defining their characteristics, defining geographical boundaries, etc.

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