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Reform in Geographical Indication Policies: A Comparative Analysis between India and the US

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ABSTRACT

The Geographical Indications Act, 1999 and Geographical Indication Rules, 2002 deal with those clauses that provide for insufficient protection to the producers under the Act. The inclusion of specific legal provisions or a lack thereof have caused serious prejudice to the rights of the producers and the same are dealt in detail in this paper.

Further, by focusing on various issues, a comparative analysis of Indian laws with the ones present in the United States help us understand the lacunas better and the kinds of problems that may arise in the future due to the incomprehensibility of these laws in India.

In order to highlight such issues, the impact of the existing legal problems need to be measured. A systematic approach towards those issues has led this research to various recommendations as to how these drawbacks can be curbed and what all initiatives can be taken by the government.

Keywords: *Geographical indications, Loopholes, Indian laws, United States laws, Policy Issues.*

I. INTRODUCTION

Discussing about Geographical Indications whether it be the Indian laws or the policies adopted by different countries worldwide, it creates a sense of pride for the country enacting such legal framework along with legitimising their claims with respect to certain products or services which are originating in the country mainly because of such climatic conditions. A lot of hard work and labour goes into producing, manufacturing, exporting, packaging such goods and providing such services which are claimed under such laws. This is amongst the foremost reasons why protecting such commodities forms an essential part of the law-making in any country.

Geographical Indications are considered to be one of the intellectual properties because of the fact that when it comes to the term 'property' it does have a group of producers claiming their

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ownership in one way or another and in terms of 'intellect', the intricate work that goes in the whole growing or manufacturing process is achieved through years of training and experimentation. For instance, in the case of wine, not only does it take several years to ferment, it also requires specific techniques to store the wine and a specific kind of climate that the vineyards must have in order for the grapes to grow. This requires certain skills and a lot of hard work and careful management of the whole process from the start to end. Similarly, in the case of darjeeling tea not only does the climate play an integral role but which leaves have to be plucked specifically for constituting such aroma and flavour of the tea is a skill acquired by the local producers only.

On one hand, framing legislation contributes majorly as to how such intellectual property will be safeguarded and promoted in a country, it is also essential to enact such laws effectively and efficiently. This again requires the laws to be comprehensive on one side and their implementation to be revised and checked over a period of time. This paper deals with such issues that are currently faced by the Geographical Indication products in India and also analyzes such laws in the light of the policies present in the United States with respect to the same. It also includes case studies which highlight such issues and provides for suitable recommendations that can be adopted in order to facilitate a healthier growth of such Geographical Indication tagged products and the community of the producers making such products at large. This will help strengthen the current laws and also provide for a futuristic positive approach towards Geographical Indication as a crucial part of Intellectual Property.

II. RESEARCH PROBLEM STATEMENT

The main problem statements that this paper is concerned with are:

1. What are the various flaws/loopholes in the present Geographical Indications Act as compared to the laws established in the United States with respect to the same regime?
2. What is the evidence to support that such flaws are hampering the growth or causing any prejudice to the interest of the producers seeking protection under the Act?

Every law has its own flaws and while on one hand, the Geographical Indications Act 1999 was established mainly to ensure a sui generis protection to the goods produced in India which form part of the identity of the country, it is still lacking certain areas which have a crucial negative impact and thus has also caused a gap in the protection offered by the Act.

(A) Policy issues

The dominant problems with respect to the Geographical Indications Act 1999 per se are:

1. Definitions

The term ‘goods’ as mentioned under the Act³ includes any agricultural, natural or manufactured goods and goods related to handicrafts, or any industry and or food stuff. The scope of this definition as compared to what has been mentioned under the TRIPS (Trade Related Aspects of Intellectual Property Rights) guidelines with respect to the same is much narrower. Another question arises as to from where this definition has been derived and keeping what criteria as the basis since it was not mentioned in TRIPS⁴.

The definition as provided by Section 2 (b) along with the interpretation of Section 17 of the Act attributes to the ambiguity of the terms ‘authorized user’ and ‘person’. As per the General Clauses Act, 1897, the term ‘persons’⁵ may include an organization or body of individuals whether incorporated or not. This means that such authorised user or producer(s) can also be a governmental organization as covered within the scope of the definitions of the Act.

Some level of vagueness is also found in Section 2 (k) of the Act where producers of a good includes the whole process of packaging, and exploitation of natural goods which again includes any organization/company/association other than the true producers who must benefit from such protection under the law.

2. Registration

The process of registration under the Act mentions that the Registrar will constitute a Consultative body of experts to examine an application of Geographical Indication. However, even as per the Rule 33 of Geographical Indication Rules 2002, there is no criteria mentioned as to how such individuals qualify to be a member of such a body.

Further, it is important to note that Registration is the ultimate step in the process of protection under the Act. This means that a mechanism to ensure proper quality checks and routine measures regarding awareness etc have not been covered by the Act.

3. Enforcement mechanism

A recent example of how Bengal and Odisha had a war over the claims of Rasogolla⁶ shows the lack of proper implementation on the part of the Act. There could be various contributory

³ Section 2(f) of Geographical Indications Act, 1999

⁴ World Trade Organization 1995, (Apr. 2, 2021, 10:16 AM) https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules4_e.pdf

⁵ Section 3(42) of the General Clauses Act 1897

⁶ Latha Nair, *What exactly are geographical indications and who can apply for GI status?*, Business Standard, December 9, 2018, https://www.business-standard.com/article/opinion/what-exactly-are-geographical-indications-and-who-can-apply-for-gi-status-118120900519_1.html

reasons for this. The foremost being the lack of funding under the Act as there is no provision to ensure a proper body that helps enforce the laws effectively.

4. Economic Barrier

Another major problem is caused by the fact that Section 24 of the Act prohibits any kind of licensing, assignment, transmission or any agreement relating to the same. On one hand, this is to ensure the authenticity of the products/goods covered under the term 'goods' as per the Act but on the contrary it is also acting as a bar to economic growth. In the case of handicraft products, lack of incentives to promote such goods leads to the same level of income of the maker despite the same being recognised as a G.I. product under the Act. This will be discussed in later chapters of the paper.

5. Awareness

Lack of awareness about the quality of products and the effort that goes into making each commodity which the consumers aren't aware of also leads to no economic boost/profit for the makers/producers. This is also because no such initiative has been mentioned under the Act for the same and the government has also not actively participated with the help of any kind of media coverage regarding such goods.

(B) Administrative Issues

The fact that the Geographical Indications Act only mentions the registration process in detail and as such no other mechanism has been mentioned to provide for maintaining the reputation of the product that has been awarded the G.I. tag is a major issue in itself. When we look at the meaning of geographical indication, it is evident that achieving a G.I. tag is not only meant to relate to the economical aspect of a country but also, a matter of pride and prestige for the nation. Since there's no procedure to ensure a good reputation of the products covered under the Act, this matter of pride for the nation also faces a threat today.

(C) International Issues

The process of obtaining a G.I. as mentioned under the current Indian law has exclusive provisions on how to file for a Geographical Indication but there's no provision that explains/established the procedure of filing for an international application. Section 84 and 85 of the Act bletcher about the National treatment which will be accorded to all those countries who have placed the same importance to our country but no such procedural provisions as to how an application can be filed for obtaining the Geographical Indication internationally or in any specific country abroad. Therefore, clearly the enactment lacks the procedure to get the

international protection of Geographical Indication.

III. RESEARCH OBJECTIVE

The main objectives behind this research paper is discussed as follows:

- Review the Geographical Indications Act 1999 and conduct an in-depth study;
- Extract loopholes from the Act which have failed to carry out the main purpose for which this Act was established in the first place;
- Compare the Geographical Indications Act 1999 with the present laws in the United States of America concerning with Geographical Indications;
- Lay down the outcomes due to such loopholes that have caused any prejudice to the reputation of the producers or the effort put in by the community in order to obtain such G.I. tag covered by the Act

These objectives are however, not limited to the scope of this Act as observed. This paper also discusses further recommendations that can make the Act more comprehensive and increase its scope for a better protection not only for the producers but also for the nation as a whole.

IV. METHODOLOGY

The methodology as adopted in this paper comprises a combination of doctrinal and analytical approaches. On one hand, various case laws, the concerned Acts (such as the Geographical Indications Act 1999) and other legal references have been studied and mentioned thereafter in this paper, while on the other hand, an analytical approach covers the purview of extracting the flaws in the Geographical Indications Act 1999. Later, comparing the Act with the legal provisions of the United States in this regard enables us to figure out what can be done in order to make this Act more effective and such suggestions have been explained at the end of this paper.

V. DATA COLLECTION

In order to call any research authentic, there are various steps involved but the basis of every kind of research consists of collecting data. Be it the already existing data that has to be reviewed or a unique survey/interview that helps the researcher reach a conclusion, data collection forms an integral part of a research. This paper includes data in two forms, namely, Primary Sources (that is, the laws and judicial pronouncements) and the Secondary Sources (that is, articles, blogs, books and journals of other authors).

(A) Primary Sources

As mentioned above, Primary sources include enactments and case laws previously decided by the courts in respect of the concerned research. In this paper, these resources will help us get a clear and better understanding of what exactly is mentioned under the laws and how it operates creating an impact on the lives of those related to it.

1. Geographical Indications Act 1999:
2. Geographical Indications Rules 2002:
3. The Lanham Act 1946/ US Trademark Act 1946:

Legal Pronouncements

- India-US Basmati Dispute 2000

(B) Secondary Sources

Secondary sources include all the blogs, journals, articles and books that have been referred to for the purpose of making this research comprehensive yet specific. These are discussed as follows:

- a. Relocating the law of Geographical Indications⁷
- b. Understanding the Real-World Impact of Geographical Indications: A Critical Review of the Empirical Economic Literature⁸

VI. COMPARISON OF THE GI LAWS BETWEEN US AND INDIA

Geographical Indication is an international phenomenon, originating from the 1883 Appellation of Origin. The roadmap of GI at such a level shows the evidence of international agreements and conventions. The international trade system was in urgent need of a consolidated legal framework. Such urgency led to the establishment of the World Trade Organisation. Globalisation took a different angle and intellectual property emerged as a significant tool. The policy-makers predicted the importance of intellectual property rights, both at an international and domestic level. This further led to the inclusion of Intellectual Property in WTO policies.

(A) TRIPS

The decision makers took a crucial step to introduce an Intellectual Property Rights control mechanism per se. These gave birth to the agreement of Trade Related Aspects of Intellectual

⁷ Dev Gangjee, Relocating the law of Geographical Indications, 218-219

⁸ Török, Á.; Jantyk, L.; Maró, Z.M.; Moir, H.V.J. Understanding the Real-World Impact of Geographical Indications: A Critical Review of the Empirical Economic Literature. *Sustainability* **2020**, *12*, 9434. <https://doi.org/10.3390/su12229434>

Property Rights, as we know it today. There were various kinds of international agreements prior to TRIPS, but this was the first comprehensive and one-of-a-kind agreement that existed in history. It accumulated all the branches of intellectual property rights such as patents, trademark, geographical indication and so on. While TRIPS was introduced with an aim of providing for a one-stop protection mechanism, there were many countries who did not partake in signing this document. The mandate was that the signatories need to implement the provisions under the agreement in their domestic legal arena and certain time-limit was assigned for developed and developing countries, separately.

(B) TRIPS and US

In 1994, the United States being the member of the World Trade Organisation, was under the obligation to abide by the Trade Related Aspects of Intellectual Property Rights agreement. This meant that the United States was under the compulsion to protect the goods of origin, also known as, Geographical Indications. GI succeeded in securing a separate category in the TRIPS, under Article 22. It read as follows:

“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 geographic origin.”⁹

It is a very astonishing fact unknown to most, that the United States had a GI protection mechanism long before the official announcement and inclusion by the TRIPS. At the time, it was not mandatory under the TRIPS to bring a separate legally recognising framework, if the member country already had a domestic law concerning any specific regime mentioned thereunder. This is the reason why the United States did not enact a distinct law for the same.

The United States judicial system was already adaptive towards the Trademark law from 1946 and which is why they chose to provide protection for a GI under the same law. The United States Patent and Trademark Office (USPTO) and the United States common law will also have the binding effect on the GIs as mentioned under the Act.

(C) Geographical Indication in US

In the US, GI is protected under the specific category of Certification and Collective marks, which plays a vital role in indicating regional and local origin. This law is portrayed in Section 4 of the Trademark Act, 1946.

“Subject to the provisions relating to the registration of trademarks, so far as they are

⁹ Article 22, Trade Related Aspects of Intellectual Property Rights (TRIPS)

applicable, collective and certification marks, including indications of regional origin used in commerce, shall be registrable under this Act, in the same manner and with the same effect as are trade-marks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trade-marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used."¹⁰

Most of the GIs are protected under the abovementioned law and can also be protected under the category of Trademarks. It can be stated that GI and Trademark play quite similar roles by helping the customers to identify the source or origin of goods. Both of the IPRs help to analyze the quality of the product and to identify its source, by providing a significant commercial value.

In the United States, USPTO acts as the parent legal body to supervise the grant of GIs. USPTO is also responsible for any kind of refusal. If anyone is aggrieved by the decision of the USPTO then they can appeal to US Court. The official website and register of the parent legal body promotes transparency between the public and the information regarding application and post grant information, it also includes the details of the trials relating to Trademark and appeal.

Research surfaced one provision which uplifts the consideration of GI and Trademark under the same umbrella. Section 2 (e) (2) of the Trademarks Act, 1946 "Consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) *when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof*, or (3) is primarily merely a surname."¹¹

This law states that if a mark contains geographical description or deceptively misdescriptive terms, then it will be refused for registration. But, there is an exception, the proviso says that if the certification mark indicates regional origin of the product then it can be registered. In the case of *Tea Board of India vs The Republic of Tea, Inc.*, 80 U.S.P.Q. 2d 1881, 1899 (TTAB 2006), TTAB held that "the term DARJEELING is inherently distinctive as a certification mark

¹⁰ Section 4, The Lanham Act 1946/ US Trademark Act, 1946, United States of America

¹¹ Section 2 (e) (2), The Lanham Act 1946/ US Trademark Act, 1946, United States of America

as it inherently identifies the geographical source of the tea”¹²

In case of filing an application for a certification mark signifying regional origin, the application must contain a statement which portrays the mark that it is certifying, and also a statement that implies that the owner of the mark is the applicant itself. The application must disclose the names of the authorised users belonging to the origin of production. We need to be clear with the fact that this law sets a bar to the powers of producers and sellers, they cannot file an application for certification. The reason is that the law forbids the certifier/applicant to commercialise the product, so the certifier/applicant or the owner of the mark can only advertise and promote the recognition of the mark. He can authorise the users to indulge in producing and selling, although such details must also be included in the application.

(D) Comparison between US and India in relation to GI

In India, GI is protected only under a sui generis system of protection, trademark laws does not provide protection of GI, whereas in the US, Trademark laws provide protection to the GIs, there is also a presence of a sui generis system of protection for wines and spirits.

In India there is one strict sui generis law that protects GI i.e., Geographical Indication of Goods (Registration and Protection) Act, 1999 along with Geographical Indication of Goods (Registration and Protection) Rules, 2002, while in US there are various legislations that come in the protection of GI, they are - The Lanham Trade Mark Act, 1946, US code, Title 15 (USC), The Alcoholic Beverage Labelling Act (1988).

One of the most remarkable differences between the US and Indian GI laws is the scope of protection. In India GI legislation provides protection to only Goods, but not services, whereas in US, GI laws widens the scope of protection by protecting both goods and services.

In India, the responsibility of registration for the goods of origin is levied on the Registrar, while in the US, the power to grant and reject application is on United States Patent and Trademark Office (USPTO).

One of the similarities between US and Indian GI laws is the duration of protection for Geographical Indication products. The protection period is for 10 years, with an allowance of renewal for a period of 10 years more.

Commercialisation plays a very important role in exercising the industrial applicability or utility of Intellectual Property. Assignment, Licensing and Transmission boosts

¹² Geographical Indication, Office of Policy and International Affairs, United States Patent and Trademark Office, (Jan 10, 2019, 08:22 AM), <https://www.uspto.gov/ip-policy/trademark-policy/geographical-indications>

commercialisation of IP by expanding the market. In India, the GI law forbids any kind of agreement related to assignment, licensing and transmission, except hereditary/legal representation. In the US, the GI products are protected under the Trademark act, which opens the door for licensing, assignment and transmission of the products.

(E) Case Study between India and US

Case Number: 493

Case Mnemonic: Basmati

Case Name: India-US basmati Rice Dispute

Patent Number: US5663484 A¹³

In the landmark case of Basmati which is considered to be most relevant in terms of formulation of GI laws, a Texas based US company Rice tech had filed for a patent for a rice breed, known to be of high quality. When the Indian farmers came to know about this patent application, they filed a suit against Rice Tech claiming that such a breed of rice originally belongs to the region of India and Pakistan and is famously grown in the foothills of Himalayan sphere.

Primarily, there was no such place with the name ‘Basmati’ situated in India and thus, such a claim was based upon the geographical origin. In the end, the USPTO upheld such Indian claims and the grant of patent was subsequently denied to Rice Tech¹⁴.

(F) Impact of the loopholes in India

1. Ambiguity

There are several confusing clauses present in the Indian GI laws. So, the ones interpreting such legal provisions will also have difficulty in defining the scope of such laws. In addition to this, ambiguity also causes lack of proper procedure for filing for a GI, as well as the scope of protection in such a framework. When the whole process of filing for a GI under the Indian law halts at the mere registration level, there isn't much one can expect from such protection under the law.

For instance, the phrase, ‘producer’ as mentioned in Section 2(k) of the Act has a much wider scope than required. It covers all those who are involved in the process of exploitation, making, manufacturing and production of such goods mentioned in the definition. However, this entitles

¹³ BASMATI, TED Case Studies, Geographic Indications and International Trade (GIANT), <http://mandalaproyects.com/giant-project/basmati.htm>

¹⁴ Pratibha Kumari, Comparison of Geographical Indication of India with USA GI regime and TRIPS, Jun 1, 2020, <https://www.kanunisahara.com/post/comparison-of-geographical-indication-of-india-with-usa-gi-regime-and-trips>

the Central as well as State government to file an application as a producer falling within the ambit of this definition. This affects the interest of the producers at large. This is so because any governmental body can file for a GI without the prior consent/consultation of the producers and thus can harm the reputation as well as the true claim over the GI product. It is also evident that such uniqueness, factual data and human factor and skill involved in making the product may not be portrayed in its true essence.

The impact of such ambiguity is such that the producers aren't able to get what they deserve in the sense of commercial production and actual selling price of the product.

Another instance can be taken of the Geographical Indication Rules 2002 where the bench that is formed for discussing and deciding on the acceptance and rejection of the GI product is constituted on the whims and fancies of the Patent Registrar as mentioned under Rule 33. This is so because the qualifications to become such a Board's member are not prescribed anywhere in the Act or Rules. This may lead to arbitrariness and the unaware producers will further enhance the degradation of GI products in India. It is also true that this confusion is a brainchild of the problem of lack of awareness regarding GI tags and their importance in the country.

2. Lack of awareness

Among the major concerns that threaten the ground reality of GI laws in the country is the fact that many producers dealing with goods of origin aren't aware of such legislation in the country. The persons who have been producing unique products that are related to a particular region, could not acquire optimum utilisation. The GI law came into enforcement but the administration failed to spread awareness of such intellectual property rights. Evidentially, in the region of West Bengal where certain handicraft workers have been working their whole life and several generations have passed in the same tedious business, they've not been able to increase the price of their commodity. The main reason for this is because consumers are not aware of the value of the effort that goes in the making of such products and how intricate the whole process is. Consequently, these products are sold at the same or marginally increased price over the years which causes little or no growth in the handicraft industry of the said region.

Despite the lack of awareness amongst the consumers, even the producers do not charge a higher price as no one would buy such products involving detailed handwork where a machine-made equivalent at much lower cost is available in the market at the same time. Government hasn't shown an active participation in the process of promoting through advertising and campaigns for such GI tagged products to enhance their market value and thus, sadly there is

nothing done for the upliftment of such workmen belonging to small scale industries.

3. Non- action of the admin body

Enacting a law shouldn't be the main concern of any democratic government as their implementation plays an even more supportive and major role in strengthening the roots of any economy and its legal status. Similarly, in the case of a Geographical Indication, where the law only provides for registration as the final step in the process. The main lacuna therefore is the absence of a mechanism to ensure that such quality, essence, and commercial utilisation of such GI products is being consistently maintained or not. The administrative bodies fail to establish a system of check and balance as to when the GI tag is once acquired, whether it is maintaining the standards set forth in its original application or not.

Again, the government on State as well as Central level can initiate a growth-promoting welfare program which not only ensures maintaining the standards but also works towards the betterment of small and medium scale enterprises of such GI products. Having multiple GIs is a matter of huge pride for the country, but if nothing is done to ensure that such products are made with the same attributes and detailing, it is of no use for the economy.

VII. CONCLUSION

One of the most significant international movements that India participated in is the TRIPS. TRIPS uplifted the rights related to intellectual property and enlarged its protection in every field. India amended the existing intellectual property laws and also enacted few. India enacted the Geographical Indication laws in accordance to TRIPS, to protect the goods of origin. Unlike the USA, India protects GI products through a sui generis protection system. The registration is not compulsory in India but without the grant, the producers or the sellers won't be able to take any legal action against any infringement. Each and every relevant information related to a particular GI is mentioned in the Register, which can be accessed online from the Government website. TRIPS provide protection in a generic sense, as in the term goods have not been specified, but in India the term goods have been specified into natural, agricultural, handicraft, industrial or manufactured one.

Even though India provided itself with a sui generis mechanism for providing protection to the goods of origin, it is covered with few loopholes. The ambiguity in the enactment stands a barrier and drawback to the economic development for the community engaged with the production and commercialisation of GI products. In order to analyse the loopholes and drawbacks of the Indian enactment, this research conducted a comparative study of the GI laws in the US. The comparison laid down various kinds of bulletins which established that the legal

framework implemented for the protection of GI is different in both the nations. The major difference is the law in hand, in the US, the Trademark law protects GI, whereas in India, the Geographical Indication of Goods (Registration and Protection) Act, 1999 protects the goods of origin, which is a sui generis mechanism. Out of the major drawbacks in comparison to the US is the scope of protection, India does not protect services while in the US it is protected.

After the comparison, it was the target of this research paper to analyze the level of damage such drawbacks caused. It was necessary to examine the impact of such loopholes of the act and the non-action of the administrative bodies. It helped to scrutinize the parts where the actual injuries are occurring and how such can be repaired. Valuable recommendations such as amendment and increase of actions by the administrative authorities and many others will help to recover from such impairment.

VIII. RECOMMENDATIONS

While on one hand, addressing the issues with the help of relevant examples, case studies and text references helps us analyze the current status of any given topic, it is also important to provide for suggestions that can help improve such a situation for a more comprehensive approach towards any problem. The following recommendations elucidates how the above mentioned issues can be dealt with such that the growth of Geographical Indications is not hampered:

- **Amendment of the act:** As such the lack of certain provisions or the excess of power in a few clauses requires amendments in order to fill the gaps created by such a legal framework.

- **Board Qualifications:** Since the appointment of such persons constituting the board to accept or reject the applications for a Geographical Indication is not clearly defined as to on what basis will such persons be hired and is totally dependent on the Registrar, the same must be mentioned in order to eradicate the slightest window of autocratic behaviour in any governmental organisation. Along with such qualifications, it is also possible that the method of such appointment be made through an anonymous election and not by the power vested solely in one person, that is, the Registrar as stated by the law.

- **Definition of producer:** The existing definition must be narrowed down in order to cover only the true and authentic producers and not any governmental or executive body which may take undue advantage of such a status as there isn't much awareness about a GI tag product in the country as it is.

- **Vague terms such as ‘person’:** The term ‘person’ isn’t defined anywhere in the act and the same can include any company who may or may not be the rightful owner of any proposed GI product. Hence, such vagueness can be avoided on the part of the legislation by providing a proper and narrow definition working only in the favour of those who must benefit from the same.

- **Inclusion of services like US (Kerala massage example):** Unlike US, India has no provision to provide for the protection of services under a GI tag. This can be added through an amendment in the Act which will make it more comprehensive in terms of scope of protection and services such as the Kerala massage can also be included which are losing the status of being unique day by day. This can also diminish the value of the mere services that exclusively belong to the Indian region and shall soon be in the generic domain, if any such inclusion of services is not done sooner.

- **Introduction of quality check mechanism (pre grant):** The constitution of a board along with a Registrar to decide upon any GI application is incomplete in the sense that the current GI laws do not provide for any quality-check mechanism before such grant of any GI tag. This means that no standard is set by the laws before such a tag is assigned to any particular commodity and thus, without any prescribed standard, the decision taken on applications is solely based on the tastes and preferences of the deciding authorities. As per a democratic economy, it is only fair to request for such a mechanism at the pre grant stage itself for a better clarity and understanding in case of any rejection of an application before grant. It will also work as a self-explanatory ground if any applicant fails to maintain such standards or prove that such standards are maintained in the making of such a proposed GI product.

- **Removal of barrier of agreement like assignment, licensing, transmission -- in us there are allowed, since in US GI is covered under TM:** As observed in the case of the laws in United States with respect to GIs and discussed in the previous chapters, barrier caused by the lack of provisions for assignment, licensing and transmission are hampering the growth of commercial utilisation of such GI products and are posing an unnecessary restriction on the use and promotion of such commodities. It is therefore a reasonable inclusion through an amendment that this paper has discussed.

- **Increase of Admin Actions (post grant):** Establishing a committee at various state or district levels meant for just supervising and ensuring growth and promotion of the small and medium scale industries involved in the GI process is one way to go about it. But, it is more

important to provide for by-laws for such committees which specifically mention the funds for such promotional and administrative activities carried out by such authorities.

- **Improvement of the status of the Small scale producers of origin:** There can be various other measures that the government can undertake to improve the condition of those small scale industries which are trapped in the vicious circle of mandatorily keeping their product price low due to competition from the machine-made low cost producers. One such recommendation involves establishing a fund meant exclusively to help them sustain while working on other measures suggested herein.

- **Spread of Awareness:** Awareness in terms of consumers can be undertaken through advertising campaigns and banners etc which discuss the importance of GI products as a pride for the country as well as a symbol of recognition of the hard work of the producers involved in making such products. The second kind of awareness which relates to the producers recognising their rights and interests after applying for a GI tag can be made possible through education programs held at every district, village and state level and the number of participants can also be recorded for the purpose of maintaining separate data regarding the same. Such data will then help in ascertaining the success of such seminars and workshops conducted therein.

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