Pre- and Post- Geographical Indications Registration Measures for Handicrafts in India

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Over the recent past, Geographical Indications (GIs) have emerged as a significant form of intellectual property rights in the Indian context. In view of the commercial potential of handicrafts, adequate legal protection of GIs becomes necessary to prevent their unauthorized utilization. The illegitimate practice of using geographical names not only damages the reputation of the original product, but also deprives the genuine right holders of the returns on investments for developing goods and its reputation in the market. Moreover, the consumers are likely to be misled into purchasing the counterfeits. This paper provides an overview of the current status of registered GIs and their classification with respect to handicrafts and their region-wise registrations. More importantly, this paper focuses on the need to improve the existing pre-and post-registration GI measures along with its reinforcement measures as critical factors to the success of the handicrafts industry in India.

Keywords: Geographical indications, handicrafts, pre- and post-registration measures

India has a rich history of traditional art and handicrafts that has evolved over the centuries. The entire wealth of timeless Indian handicrafts has survived through the ages. The legacy of Indian traditional art promises everything from traditional characters, beauty, dignity, different forms to styles. The magnetic appeal lies in its exclusivity and mystical value.

The handicraft industry in India is a major source of income for rural communities and plays a vital role in the economic development of the country. Handicrafts have evolved as one of the major revenue generators for Indian industries over the years and are one of the key contributors in export.¹ Government statistics estimate that the textile industry alone contributes about 14 per cent to industrial production, 4 per cent to the gross domestic product, and 13.5 per cent to the country’s export earnings which provides direct employment to over 35 million people,² an overwhelming majority of which belong to the weaker and more vulnerable sections of society. These vast numbers are skilled creators of products that have immense brand recognition and goodwill built over generations and that have over the millennia defined India and the Indian identity.

Today, a major difficulty for the industry is to develop legal strategies to counter anti-competitive practices and counterfeit products which pose threat to the sustainability and survival of these traditional products. It is important to note that even if GI can be part of such a legal strategy, GIs only protect the name and not the actual knowledge associated with a product. The knowledge remains in the public domain, and is therefore open to misappropriation. Craft persons need to protect their traditional art from being copied by other manufacturers through unfair means. Protection of handicrafts may be provided under GI category of intellectual property law. GI registration helps to establish the exclusiveness to stand out, and provide a distinct edge over the other range of products in the market. This law of GI is in place to benefit and protect these craft persons while simultaneously benefiting the consumers. The GIs can accomplish many functions, such as: protect the interests of producers who offer goods that bear marks indicating which geographical region they come from, where such goods possess qualities, reputation or characteristics that are essentially attributable to that place of origin; protect producers against piracy and unfair competition; protect consumers from being mislead as to the origin of goods and their quality and characteristics, and ensure that they can rely upon the names of goods as

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indicators of the quality of the items they are purchasing; educate consumers about the origin of goods as well as their quality and characteristics; encourage investment in the production of quality local products. Although creating awareness among these communities for GI registration is critical for its success as an industry, in each case, there should be careful assessment of the sustainability of a given product. While the registration and implementation of a GI can be costly and time consuming, other IP strategies may also need to be considered. It is also required to chalk out stakeholder involvement through collective actions and synergistic efforts in maintaining product quality, certification standards, Code of Practice for the manufacturing process, creating market niche, and enhancing brand image to leverage the registered GI’s in national and international markets.

Geographical Indications

The term GI refers to any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. GI can help a community of producers to differentiate their products from competing products in the market and build goodwill around their products, often attracting a premium price. From a consumers’ point of view, GIs act as a signaling device, which helps them identify genuine quality-products and protects them against counterfeits.

The Geographical Indications Act (Registration and Protection) passed in December 1999, came into force with effect from 15 September 2003. Under this Act, the Central Government has established a ‘Geographical Indications Registry’ at Chennai with all India jurisdiction.

The GI Registration Process in India

Any association of persons or organization or statutory authority can apply for registration and the application should contain:

(a) A statement as to how the indication connotes specific quality, reputation or other characteristics which are essentially due to the geographical environment, natural and human factors; special methods of production; processing or preparation that takes place in the said geographical area.

(b) The class of goods sought to be covered by the registration.

(c) The geographical map of the territory in which, the goods originate.

(d) Method of appearance of the geographical indicators on the goods.

(e) Particulars of the procedures of the authorized users of the geographical indications.

After the acceptance of the application, the same is advertised in the Geographical Indication Journal and within three months of such advertisement any person can file opposition proceedings against the registration. The Registrar will forward the copy of the opposition to the applicant and within two months of its receipt, the applicant should lodge a counter statement against the opposition. If the applicant fails to lodge the counter statement, the application would be deemed to have been abandoned. After this procedure is over, the parties are permitted to submit evidence in support of their respective cases. After the submission of evidence, the Registrar will give an opportunity to the parties for an oral hearing and thereafter the matter gets decided. The certificate of registration is valid for a period of 10 years and can be renewed further for a period of ten years from the date of expiration of the original registration or from the last renewal of registration, as the case may be [Section 18(3) of the GI Act].

The most important feature of this Act is the provision available for registered users. For example, if a co-operative society registers Lucknow Chikan as a handicraft, every owner of the craft in Lucknow can become a registered user authorized to use the name indicating the origin of the product with particular quality, characteristic and distinctiveness.

Pre- and Post-GI Registration Measures for Handicrafts in India

The pre-registration measures in India include identification of products by crafts persons and creating public awareness on the need and use of the GI goods which improves the life and livelihood of the artisans; at the same time protecting the culture, tradition and heritage of our country. On the other hand, the post-registration measures include different activities like maintaining quality standards by manufacturers, creating brand awareness, keeping vigilant market watch and regular inspections for any infringements of registered GI products (Fig. 1).
Pre-registration Measures

Initially, the products originating from a place in India that were unique, were protected through the existing laws including (i) Consumer Protection Act, (ii) passing off actions in courts, and, (iii) certification marks that provided the same protection as GI registration. Later, it was realized that such legal provisions are not sufficient to protect the GIs of India in the changing world scenario as innumerable foreign companies and traders free-ride on the goodwill and reputation associated with renowned geographical names of Indian products. For example, ‘Basmati’ denotes a variety of rice with special qualities grown in the India-Pakistan belt. The quality of ‘Basmati’ rice cannot be duplicated by creating a similar artificial environment. Hence, it was argued that the name ‘Texmati’ which was given to the rice that RiceTech Inc (a Texas based company) claimed it invented was not valid. The name was so deceptively similar to the term ‘Basmati’ that a consumer would be led to believe that this was also a strain of rice that was grown in the India-Pakistan belt. The name ‘Texmati’ for the new strain of rice that RiceTech Inc was seeking to introduce in the market was argued against. By not protecting Basmati rice under GI, such products if allowed to be produced by other countries would lose their geographical identity over time and become generic.

Therefore, identifying potential products as candidates for GI registration is very critical to avoid mass poaching and duplication by unauthorized producers. Ultimately such duplication deceives the consumer on one hand, and on the other takes away the market base of the original products and threatens the livelihood of the poor stakeholders of the products. For example, the phenomenal success of Pashmina shawls of Jammu & Kashmir in late 1990s led to the mass production of cheap imitations made of artificial fibers rather than the soft belly hair of Himalayan goats. The original Pashmina shawls used a raw material locally known as Pashm, which is transformed into Pashmina through an eight-step process. Often a machine-made woolen product is also sold confusing the common public regarding the authenticity of Pashmina shawl. Therefore, the Craft Development Institute and the Government of Jammu and Kashmir identified the market potential of Pashmina shawl and registered it as a GI.

A proper detailed documentation and comprehensive study based on unique characters, specifications of the products, processes, areas of production, and at the same time, the market potential for the products on a national scale as well as for export, and possible threats from the counterfeit products need to be identified in advance in order to distinguish the potential candidates for GI registrations (Fig. 2).

Creating awareness among the manufacturers for GI registration is another important aspect of pre-registration measures. In order to comprehend this aspect, an overview of current status of GI registrations in India is warranted. Based on data from GI Registry in Chennai, as of June 2011, a total of 151 GIs have been already registered including few of foreign origin. Out of the 151 registered GIs, the handicrafts category alone accounts for
97 registrations (Fig. 3). Table 1 shows how these are further classified on the basis of type of product. It is assumed that the increase in the number of GI registrations for textile products is a direct reflection of the initiatives taken by the Ministry of Textiles in the country, and similarly, it is essential to create awareness and expedite the process of GI registration for other category of products as well.

In order to realize the success of the textiles industry, it is important to understand the nature of intervention commissioned by the Textiles Committee for GI registration. The Ministry of Textiles has been instrumental in creating awareness on GI in synergy with the State Governments for facilitation for GI registration, which confers legal protection to the traditional knowledge-based community producers. This has helped them to contain infringement, protect their market share, and to generate a better income for economically backward skilled artisans. To protect these unique products, the Textiles Committee has been spearheading a nationwide campaign in the country by facilitating GI registration of potential products and technical knowledge transfers as a part of a five pronged approach that includes: (i) organizing nationwide workshops for awareness creation, (ii) organizing studies for identifying potential textile products for IPR protection, (iii) preparation of documentation reports of the selected products, (iv) facilitating GI registration of the products, and (v) quantifying post-GI benefits by undertaking effect studies. As a part of this endeavour, the Committee has also facilitated GI registration for products like Lucknow Chikan, Banarasi Saree, Brocades of Uttar Pradesh, Khandua Saree and fabrics, Pipli Applique of Orissa, Bandhani and Surat Zari of Gujarat, Paithani Saree of Maharashtra, Bhagalpur Silk of Bihar, and Guledgudda fabrics of Karnataka.10

Further, the State-wise data (Table 2) on registered GI under handicrafts category indicates that most of the State Governments have registered a good number of GIs while few states, in particular, from North-East India do not have any GI registrations. This emphasizes the larger need for creating awareness among the manufacturers of crafts GI for registration in these states.

<table>
<thead>
<tr>
<th>Table 1—Number of GIs registered as handicrafts (product-wise)</th>
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<tbody>
<tr>
<td>Type of product</td>
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<tr>
<td>Textiles</td>
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<tr>
<td>Metal crafts</td>
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<tr>
<td>Paintings</td>
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<tr>
<td>Toys and dolls</td>
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<tr>
<td>Wooden crafts, Furnishings, Leather crafts</td>
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<tr>
<td>Jewellery, Stone crafts, Clay crafts</td>
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<tr>
<td>Cards</td>
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<tr>
<td>Musical instruments</td>
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<td>Total</td>
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Source: Based on data from GI Registry, Chennai, as of June 2011

* Equal number of GI registration for each type of product

<table>
<thead>
<tr>
<th>Table 2—Number of GIs registered as handicrafts (state-wise)</th>
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<tbody>
<tr>
<td>State</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
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<tr>
<td>Karnataka</td>
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<tr>
<td>Tamil Nadu</td>
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<tr>
<td>Kerala</td>
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<tr>
<td>Rajasthan</td>
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<tr>
<td>Orissa</td>
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<tr>
<td>Gujarat</td>
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<tr>
<td>Maharashtra, Madhya Pradesh, Bihar, Chattisgarh</td>
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<tr>
<td>Uttar Pradesh, West Bengal, Himachal Pradesh, Jammu and Kashmir</td>
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<tr>
<td>Assam</td>
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<tr>
<td>Punjab, Haryana and Rajasthan</td>
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<tr>
<td>Arunachal Pradesh, Jharkhand, Manipur, Meghalaya, Mizoram, Sikkim, Tripura, Uttarakhand, Nagaland, Goa</td>
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<tr>
<td>Total</td>
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</tbody>
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* Equal number of GI registrations by each state, # single GI registration by all the states

Source: Based on data from GI Registry, Chennai, as of June 2011
Post-registration Measures

Government and/or NGOs Interventions

Presently, the GI awareness campaigns appear to be concentrated only on the registration of GI goods. The Indian Government has not made any headway in adopting strategies for branding and promotion of GI products or their marketing and distribution in both domestic and export markets. With the Government’s support and available resources, most producer groups can defend or promote their GI brands effectively in the following manner:  

(a) Many registered GIs face acute shortage of in-house funds for taking up post-registration measures. In such cases, the Government or NGOs could proactively and financially assist to set-up separate funds that expedite the post-registration measures.

(b) In case of infringement, the law provides both civil and criminal remedies. Civil remedies include injunctions (interim or permanent), damages, and delivery of the infringing goods for destruction and forfeiture of the goods that bear false representation of an existing GI. The criminal remedies may involve punishment which can be a minimum mandatory sentence of 6 months imprisonment up to a maximum of 3 years and a minimum mandatory fine of Rs 50,000/- up to a maximum of Rs 2 lakhs. In case of subsequent convictions of the same offence, the minimum mandatory sentence will be one year imprisonment and fine of Rs 2 lakhs [Section 39(f) of the GI Act].

(c) A vigilant market watch and regular inspections would lead to appropriate infringement actions against the infringers. For example, the Champagne brand is protected through watchful and fierce guarding against infringement worldwide, and the Scotch Whisky Association in the UK takes offenders passing off the ‘Scotch’ name to court, as they have done with the Khoday Distillaries (Peter Scot Case) and Pravar Sahakarav (Indian Whisky – Scottish drumbeater wearing kit) in India. Similarly, in order to prevent the misuse of ‘Darjeeling Tea’ and the logo, the Tea Board has since 1998 hired the services of Compumark, a worldwide watch agency. Pursuant to Compumark’s appointment, several cases of attempted registrations and unauthorized use of ‘Darjeeling Tea’ and Darjeeling logo have been reported. Some disputes relating to Darjeeling tea have been settled through negotiations undertaken by the Tea Board of India with the foreign companies For example Bulgarri, Switzerland agreed to withdraw the legend ‘Darjeeling Tea fragrance for men’ pursuant to legal notice and negotiations by the Tea Board. The Tea Board has fought almost 15 cases against infringement and misuse of the word Darjeeling Tea worldwide including in Russia, USA, Japan, France, Germany, Israel, Norway and Sri Lanka etc.

(d) A successful GI implementation requires cooperation among all the actors along the supply chain. This implies cooperative behaviour on the part of the firms belonging to a particular stage of the supply chain in producing similar products, and hence competing with each other in the market place. While such a combination of cooperation and competition is a unique feature of GIs, it may complicate the collective action problem further. Such complexities involved in different stages of organization and governance of a GI generally calls for an independent and representative body to mediate among the firms. Ideally, public institutions representing the interests of all firms in the supply chain are best suited at resolving these problems through appropriate interventions.

(e) Use of advanced system like radio frequency identification (RFID), a new global standards system that enables immediate and automatic identification and tracking of an item through the whole supply chain globally. The use of the suggested technology means that each product item shall carry a permanently fixed RFID tag coded with information about the manufacturing source as well as product specifications. The tag could be read by a RFID reader anywhere in the world and the information sent to a centralized station meant for validating the same. Presently, the above mentioned technology is managed by GS1 in India, a leading global organization, promoted by the Ministry of Commerce, Government of India, dedicated to the design and implementation of global standards and solutions to improve the efficiency in demand chains globally and across the sectors. The Craft Development Institute in Srinagar is in the process of introducing the RFID system for Pashmina shawls.
Local and/or Stakeholders Interventions

(a) Constitution of local enforcement committees for developing communication tools about the legal implications of the registered GI involving all concerned stakeholders in the supply chain mechanism: (i) workers, artisans and craftspersons, (ii) mutually aided co-operative societies, (iii) local retailers/large showrooms/wholesale dealers, (iv) consumers and end user groups empanelling, and (v) legal experts and market watchdogs, etc.

(b) Quality is an indispensable aspect of GI products and therefore should not be compromised. Strict adherence to traditional aspects of manufacturing must be a part and parcel of the GI quality control mechanism. Periodic investigations should be undertaken at the manufacturing sites of GI goods by authorized personnel.

(c) Advertisements and notices could be provided to the media to spread the awareness about the GI status for a particular product among its customers. Similarly, the significant characteristics or features unique to the GI product could be highlighted to be easily identifiable by the customers and safeguard themselves against counterfeits.

(d) Watchdog committees could be appointed on behalf of the proprietors of GI products to look into the incidents of unscrupulous manufacturers involved in the manufacture, storage and marketing of the GI products elsewhere other than the GI region and appropriate action could be initiated against such manufacturers.

(e) Leveraging GI as a branding tool for marketing itself. Encouraging the use of the registered GI in their product cartons, receipts, vouchers, bill boards and other items used in business promotion of the GI products. A product with a GI tag symbolizes the centuries of tradition and culture involved in its manufacturing in the minds of consumers. A mere mention of the product along with the place of its origin brings to minds of the user, the association of the product with its place of origin.16

Conclusion

Although India had been known to possess a considerable number of products that could qualify for legal protection as GIs, the initiatives to exploit this potential began only after the implementation of the GI Act. The handicrafts industry in India plays vital role in economic development of the country and a major difficulty is to protect their products from counterfeits. Although protection is provided under the GI category of IP law, strengthening through pre- and post-registration measures becomes essential for the effective utilization of this protection. The data on current status and the registration process for the GIs under the handicrafts category emphasizes the need to improve the existing framework of pre- and post-GI registration measures. The successful example of the textile industry reiterates the same in order to avoid mass poaching and duplication of products by unauthorized producers. In this context, the identification of potential GI products could be done on the basis of historical origins, areas of production, production processes, specifications, uniqueness, threat perceptions, and market potential of the products. Effective implementation of post-registration measures includes adherence to the quality standards by manufacturers, branding, promotion and vigilant market watch for any infringements of registered GI products. The importance of proactive involvement of the Government, NGOs and stakeholders of the registered GI products for the sustainable growth of the handicrafts industry in India cannot be overemphasized.

Acknowledgement

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