



National Seminar on Geographical Indications

The law on Geographical Indications and its operation in the backdrop of the TRIPS Agreement

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Outline of the Presentation

- Pre TRIPS developments- conceptual aspects
- TRIPS Standards and conflicts in the scope/type of protection
- Operation of the GIs Act, 1999 vis-à-vis TRIPS
- Gaps in the trans-border protection of GIs
- Some concluding thoughts
- Major references



Pre TRIPS developments- conceptual aspects

- GIs in a relatively new term (1974 WIPO coined)- historically known as “appellations of origin” or “indication of source”
- Historical differences in legal systems (scope and level)- common ownership central
- An 1824 French law- criminal sanctions for fraud with reference to origin of goods
 - “*appellation d'origine*” did not function as a quality indication

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Pre TRIPS developments- conceptual aspects

- Initial domestic efforts were in the direction of regulation between buyers and sellers- “consumer interests” was the concern
- Post WW-I efforts towards legal crystallization of the concept of appellations of origin in France (French law of 1919)- producer interest
- International framework- Paris Convention 1883- non-clarity on legal and conceptual framework- subsequent attempts to revive Paris Failed

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Pre TRIPS developments- conceptual aspects

- Subsequent efforts through the Madrid Agreement 1891- recognized domestic protection – however, scope still limited
- With all its limitations the Lisbon Agreement establishes the link between the products and their place of origin (Quality, other characteristics due to place of origin)
 - Geographical nexus important
 - free-riding on the reputation not allowed

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TRIPS Standards and conflicts in the scope/type of protection

- TRIPS Agreement-
 - Minimum standards
 - Links to dispute settlement
- TRIPS for the first time defined “GIs”
 - Non cumulative criterion – scope still undefined
 - “Reputation” included- thus wider than a/o
 - Prolonged use essential?
 - “essentially attributable to geographical origin”
 - Natural factors linked to geography non-essential?

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TRIPS Standards and conflicts in the scope/type of protection

- Articles 22 and 23 of TRIPS: to facilitate “interested parties” to take measures to protect GIs
 - Who is the Interested party?
- Dual System of Protection based on first domestic (home country) protection
 - General protection through principles of unfair competition – consumer deception relevant
 - Mandate to establish “legal means” – major flexibility

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TRIPS Standards and conflicts in the scope/type of protection

- Article 23(1) to wines and spirits offers a higher level of protection- 10 year exception
 - Proving consumer deception no relevant
- Equal treatment of GI fulfilling criterion does not exist within the TRIPS
 - Some EU countries use other bargaining chips for equal protection of foreign GIs (non wines and spirits)
 - Leads to problems of free riding and establishing reputation, misleading public etc...

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TRIPS Standards and conflicts in the scope/type of protection

- No consensus on increased level of protection for all GIs
 - Mainly economic concerns since GIs are fully exploited in foreign markets with full economic returns to countries owning tradable GIs
- Homonymous indications under TRIPS
 - Not defined but understood as bonafide use
 - Measures to protect competing interest ensured
- No quality control mechanism under TRIPS but an implied obligation

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Operation of the GIs Act, 1999 vis-à-vis TRIPS

- Sui Generis law has different advantages- while some countries chose to do this through certification marks procedures
- Indian definition (section 1(3) (e)) wider in scope
 - all “Goods” covered: whether geographical names or not
- Broad domestic coverage for reasons best known- there are other limitations also- quality control

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Gaps in the trans-border protection of GIs

- Broader domestic coverage leads to extensive protection in India- but same level of international protection not available
- “misleading test” under Article 22 of TRIPS overly burdensome and is not adequate to prevent GI misappropriation when the source is mentioned.
- GI can become “generic” outside the domestic borders due to misappropriation – loss of economic value

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Gaps in the trans-border protection of GIs

- Existing trade-off kind of protection afforded by some countries cannot be rationalized as basis for GI protection
- Article 23 type of protection needs to be accorded on international basis- Doha talks
- Could dispute settlement be explored for finding conceptual clarity in differential treatment
- Current moratorium on non-violation complaints

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Some concluding thoughts

- Exploring DSU for violation of MFN? – some countries accepting higher protection on certain trade bargains
- Need to bridge the divergent views- parallelism in international negotiations on GIs
- Bilateralism may not work- multilateral process important
- Rationalization of domestic conceptual and legal framework to prevent trader-based

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Major References

- K. Das, *The Protection of GIs: An Overview of Select Issues with Particular Reference to India*, **Working Paper 8, Centad**, 2007
- N.S. Gopalakrishnan *et al.* *Exploring the Relationship between Geographical Indications and Traditional Knowledge: An Analysis of the Legal Tools for the Protection of Geographical Indications in Asia*, **Working Paper, ICTSD, Geneva** (2007)

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Thank you

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Outline of the Presentation

- Introduction
- Geographical Indications- Meaning and its Protection prior to TRIPS
- Protection of Geographical Indications Under TRIPS
- Protection of Geographical Indications under National Laws
- Unresolved Issues Pertaining to Geographical Indications
- Similarities or Conflicts Between Trade Marks and Geographical Indications
- Case studies
- Conclusions and Suggestions

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INTRODUCTION

- Conflicting Claims on the issue of protection of the goods
- Cultural and legal clash
- Importance of trade marks or G.I
- Debate over separate treatment of G.I and Trademarks

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International Protection of Geographical Indications Prior to the TRIPS Agreement and Their Defects

- THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, 1883
- THE MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE ON GOODS, 1891
- THE LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION, 1958
- GENERAL AGREEMENT OF TARIFF AND TRADE, 1947

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Defects in International Treaties

- Lack of Wider acceptability
- Lack of proper enforcement mechanism
- Approach was not focused on the Geocentric approach as concern was more on the source of the goods and their characteristics

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Meaning of Geographical Indications

- Article 22-24 of the Trade Related Aspect of Intellectual Property Rights, TRIPS of the WTO
- Section 2 (1) (e) of the Indian Geographical Indications of Goods (Registration and Protection) Act, 1999.
- What can be considered as "Indications"
- What "goods" can be considered as Geographical Indications
- Who can be considered as Producer of such Goods

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Advantages of Protecting Geographical Indications

- To inform consumers about the geographical origin and specific characteristics of the goods
- To protect producers against misuse of G.I by outsiders
- To prevent consumers from being misled by the misuse of G.I by outsiders
- To assist in the promotion of the goods
- To enable the goods to be traced
- To obtain better economic returns for a product with established reputation
- To encourage diversity in agricultural production
- To give due recognition that the goods is symbol of pride of that region

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Advantage of Protecting Trade Marks

- To inform consumers about the source of manufacture of the goods
- To protect trade marks owners against misuse of trade marks by outsiders
- To prevent consumers from being misled by the misuse of trade marks by others
- To assist in the promotion of the product
- To enable the product to be traced
- To obtain better economic returns for a product with established tradition

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GI and Trade Marks: Similarities

- Both G.I and trade marks are distinctive that enable them to indicate the source of the origin of the goods
- Marketing tools used to promote products and compete in the market place
- Generic G.I and trade marks both can not be registered

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GI and Trade Marks: Differences

- Both indicate different source of the goods
- G.I can not be created, Trade Marks can be created
- G.I are the Common property of the producers of the particular region. Trade Marks indicate the personal property of commercial enterprise.
- G.I cannot be revoked for non use, while trade marks can be revoked for non use.
- Licensing of G.I are not allowed whereas trademarks can be licensed.

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Examples of Overlap between GI and Trade Marks

- Darjeeling tea from India
- Ponni Rice
- Toraja coffee
- Great Western
- Basmati

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ANALYSIS OF INFIRMITIES OF TRIPS

- Step daughter treatment of G.I in comparison with other IPRs
- Mechanism for G.I is not strong and poses a weak structure
- G.I restricted to goods only
- The use of the term 'originating' in Article 22 (1) of the TRIPS do not explain the extent the goods has to originate to qualify as G.I
- Only false usage of G.I amount to infringement
- So much discretion has been given to countries to provide G.I protection
- Use of the Paris Convention to define unfair competition create more problem than solution
- Extra protection to wines and spirit sounds objectionable

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PROTECTION OF G.Is UNDER NATIONAL LAWS

- 1. UNITED STATES OF AMERICA
 - Lanham (Trademark) Act, 1946
 - Bureau of Alcohol, Tobacco and Firearms Regulations
 - Certification Marks
 - Collective MARKS
- 2. E.U Resolutions governing GI
 - RESOLUTION NO.822/87
 - RESOLUTION NO. 823/87
 - RESOLUTION NO. 2392/89
 - RESOLUTION NO. 2081/92
- 3. INDIA
 - RESOLUTION The Geographical Indications of Goods (Registration and Protection) Act, 1999.
 - The Geographical Indications of Goods (Registration and Protection) Rules, 2002.

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UNRESOLVED ISSUES PERTAINING TO G.I.s

- A. FAILURE OF DOHA AND CANCUN MINISTERIAL CONFERENCES
- B. OLD COUNTRIES V. NEW COUNTRIES
 - ENLARGING ADDITIONAL PROTECTION GIVEN UNDER ARTICLE 23 TO OTHER GOODS ALSO
 - INTERNATIONAL REGISTER FOR WINES AND SPIRITS
 - JOINT PAPER
 - THE EU PROPOSAL
 - OTHER PROPOSALS

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Treatment of the conflict between trade marks and GI

- A. TRADEMARKS AND PROTECTION UNDER TRIPS
- ARTICLE 15.21 OF THE TRIPS AGREEMENT
- MARKS - DISTINCTIVE AND NOT DECEPTIVE
- EXCLUSIVE RIGHTS TO TRADE MARKS HOLDER
- FAIR USE OR THE TRADE MARKS
- REGISTRATION REQUIREMENT
- B. Treatment under International Law
- HOW TRIPS AND LISBON AGREEMENT TREATS THE CONFLICT BETWEEN G.I AND TRADEMARK
- HOW NATIONAL LAWS TREAT THE CONFLICT BETWEEN G.I AND TRADEMARKS
- ANALYSIS OF CASES CONCERNING CONFLICT BETWEEN G.I AND TRADEMARKS
 - THE BUDWEISER CASE
 - THE "HAVANA CLUB" RUM CASE
 - BASMATI RICE
 - RED SCOT CASE
 - CASE CONCERNING TRADEMARK USING "CHALIS WITH A TWIST"
- ❖ WHEN TRADEMARK MERELY HAS REFERENCE TO GEOGRAPHICAL NAME


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CONCLUSION AND SUGGESTIONS

- Harmony in the laws are required
- Need to have international register for both the trade marks as well GI
- Need to provide more extensive protection to other goods or products
- Need of the developing countries should be addressed

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Why GI

- Genuine Right quality products to Consumers
- Protection for the product from Infringement
- Market capitalization – Brand building
- Stakeholders to convert it to tangible benefits

Post Registration

- Retain the competitiveness
- Sustain the global competition
- Strengthen human institutional capacities
- Promote Entrepreneurship
- Create Brand
- Expand Market Base

GI to

Indian Handloom/Handicraft Industry

- Torchbearer of Indian culture and heritage
- Major source of village incomes next only to agriculture
- Agricultural labor gets employment in handloom/handicraft sector during the non-agricultural season
- Has self-sustaining mechanism including training for young weavers
- Has inherent flexibility to provide occupation for all types of communities



Pochampally Ikat Art process



The process of making Pochampally Ikat involves tying and dyeing the threads in a visualized design after and as per which the fabric will be woven.

Significance

- Natural Cluster of its Kind
- Known as Bhoodan Pochampally
- Tie & dye is the specialty
- Over 2000 traditional pit looms at Proper Pochampally & over 30,000 in near by 40 villages

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Products



- Known for
 - Pochampally Ikat sarees – Silk & Cotton
 - Bed sheets
 - Home Furnishing
 - Dress Materials

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Cluster Status

- Experienced steady growth over six decades
- Started declining trend
 - Limited Market Efforts
 - Near stagnancy in weavers' skills
- Lead to pile up of huge stocks –reached a state of stand still

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Socio Economic Conditions

- Estimated that 50% of the families living below poverty line
- 25% of the families with acute poverty
- Fear of serious problems of under consumption – might lead to starvation death, if the market does not alter in the near future

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Root Causes

- Lack of proper efforts to protect Pochampally Art
 - Absence/poor linkage with Inst./Orgns.
 - Limited exposure
 - No linkage with Exps./boutiques
 - Poor market Strategy
 - No efforts for Brand/Label promotion
 - Narrow Production Base

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The Initiative to Protect Pochampally Ikat



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The Genesis of the Idea

- The Weavers Problem – “ The Mills/PLs Copying their Designs”
- Textiles Committee under its CDP, initiated to look at how IP Can be leveraged and whether this can be one of the problem solving Instruments.

Objectives of the assignment

- Protecting the name "POCHAMPALLY IKAT"
- Preventing the unauthorized use of the name "POCHAMPALLY IKAT"
- Identifying and Providing suitable Intellectual Property Rights protection i.e. through the Geographical Indication act
- Promotion of ' POCHAMPALLY IKAT ' as a brand
- Creating IPR awareness amongst the weavers and the tangible benefits of Intellectual Property Rights Protection
- Policy formulation of identifying natures / types of violations and proposed action for IPR enforcement

Modus Operandi



- Identifying the team for the assignment
- Interactive and Awareness Sessions
- Study & Documentation
- Identifying the applicants

Modus Operandi



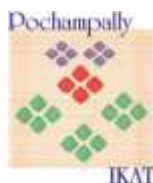
- Identifying the Uniqueness
- Financial Support
- Technical & Legal Support
- Draft of the Specifications
- Filing & Prosecution

Uniqueness of Pochampally

- Pochampally Ikat Consists of fabric :
 - a) made by a process of tying and dyeing the yarn prior to weaving
 - b) Mainly cotton or silk or a combination of both
 - c) Originating from the geographical region of agenda & Warangal districts in the state of AP

Uniqueness of Pochampally Ikat


- Having single, combined or double Ikat in several illustrations :
- The use of diamond or chowka
- Diagonal or square grids in which geometrical,floral figurative motifs are woven
- Striped or shevaron forms
- Other abstract variations



The Statement of Case – Highlights of the Manufacturing Process



Pochampally Ikat Art process



The process of making Pochampally Ikat involves tying and dyeing the threads in a visualized design after and as per which the fabric will be woven.

What followed next -----

Filing of the application

- The application for GI Registration was filed on 15 Dec 2003 .
- The applicants :
 - Pochampally Handloom Weavers's Co –op Society ltd
 - Pochampally Handloom Tie & Dye Silk Sarees Manufacturer's association

Visit of the Expert Committee



The Committee

- Controller General – Registrar
- Joint registrar
- Asst Registrar
- Textile Experts

Recommendations

- Fine tuning the Statement of Case
- Map of Nalgonda & Warangal
- Logo of Pochampally Ikat
- Class of Goods under which the Ikat Can be registered



Publication in the Gazette

- The application was published in the Government of India Gazette for public information/ opposition on September 1 2004
- The opposition period expired on December 2004

Award of the GI Registration



- Pochampally Ikat was awarded the GI Registration on 31 December 2004

Milestones Achieved

- It was the first GI application to be granted in the Textile Sector/Handicraft industry
- It was second GI registered after Darjeeling tea
- The entire process of registration was completed in a span of 12 Months

• GI AS TOOL for Market Promotion



Immediate Benefits Perceived – Post GI Registration

- Media attention – Pochampally Artisans
- Motivation & Morale boost for Weavers
- Increase in the Market of Pochampally Sarees – 15% – 20%.
- Over the Internet Sales by an Individual – Rs. 3.0 Lakhs
- Networking among the weavers --- Pochampally Ikat Weavers Pvt. Ltd -- Ikat Art Pvt. Ltd -- Handloom Park
- Proactive Support from Govt. of AP
- GI Committee in State
- More GI initiatives from AP in Pipeline

What next

- Enforcement of the Geographical Indications for preventing Copying & Passing Off
- Identifying the Infringers & take necessary action
- Establishing the legal identity in the international market

Enforcement of GI Rights

- Formation of State level/ District level committee
- Objectives of the Committee :
 - To Leverage on the registered GI- **Pochampally Ikat** for the benefit of weavers & enable them to use it as a competitive tool for socio-economic prosperity
 - To facilitate co-ordinate action with the involvement of State Enforcement Machinery and combat counterfeit Pochampally products in the market and prevent unauthorised use of the word- **Pochampally Ikat**.



Contd. . . Objectives

- To strive for the revitalisation and emancipation of **Pochampally Ikat** brand image in both domestic and international markets
- To create awareness among the stakeholder and end users about the tangible benefits of GI and to motivate them to make the best use of it.
- Facilitate a mechanism for upholding the qualitative aspects of **Pochampally Ikat** through technical interference.
- To create a niche in the country about the **Pochampally Ikat** among the policy makers, bureaucrats and stakeholders of GI
- To develop a database of possible infringers of **Pochampally Ikat**.



Contd. . .

- Leveraging the benefits of GI & to protect Weavers from Infringement of GI
 - Create Identity of **Pochampally Ikat** in National & International Market
 - Caution notices to the Infringers
 - Collecting Information on the Infringers
 - Infringement Suits
 - Ensuring Minimum Quality Inspection Standards



GI as a brand - effected in Emerging of Local Brands

- Chikat



GI as Brand

- Ikat Art



Pochampally Handloom Park As a Role Model



Welcome to Pochampally Handloom Park



Location


- Spread over 25 acres
- 60 kms. From Hyderabad on NH 9
- Very good road,,rail and air connectivity
- Covering 40 villages – well known GI cluster of 'Pochampally Ikat'



CONCEPTUALISATION OF THE PROJECT

AS A PROJECT BY SPV

- TO POOL ALL THE RESOURCES.
- TO INCREASE QUALITY OF THE PRODUCT.
- TO PROVIDE CONTINUOUS SUSTAINABLE EMPLOYMENT TO WEAVER.
- TO REGULATE THE WORK PATTERN FOR THE WEAVERS.



ABOUT POCHAMPALLY HANDLOOMS

IMPROVEMENTS DESIRED

- Technology up-gradation in weaving/Loom
- Mechanizations in Pre-weaving
- Modern dyeing facility center
- State of art testing lab
- Exclusive design lab with R&D
- 2000 plus handlooms with 40 lakh mtrs. Per annum
- Physical and Social infrastructure to facilitate high value/volume products
- Skill Improvement of weavers/ designers – Dedicated trg. center
- Domestic/ Overseas market exploration visits
- Buyer-seller meets
- Marketing and Market surveys
- Working requirement for weavers, traders, master weavers etc.



CONCEPTUALISATION OF THE PROJECT

Designing the Park - Architect

OUR INTERPRETATION

- THE CHANGE IN WORK ENVIRONMENT
- THE HOME AWAY FROM HOME.
- INTEGRATED APPROACH IN THE ORGANISATION OF SPACES AND USES.
- QUALITY OF SPACE AS A PRIORITY.



CONCEPTUALISATION OF THE PROJECT

REJECTING THE CONCEPT OF A "FACTORY SHED"

REALISING THAT THE PROJECT DEALS WITH AN "ART"

UNLIKE MASS PRODUCTION, HERE THE CREATIVE PROCESS OF PRODUCTION IS AS IMPORTANT AS THE FINAL PRODUCT

HENCE, EMPHASIS ON THE "QUALITY" OF ENVIRONMENT

TYPICAL VILLAGE-LIKE SETTING

ENABLING EASY ADAPTABILITY FOR THE WEAVERS




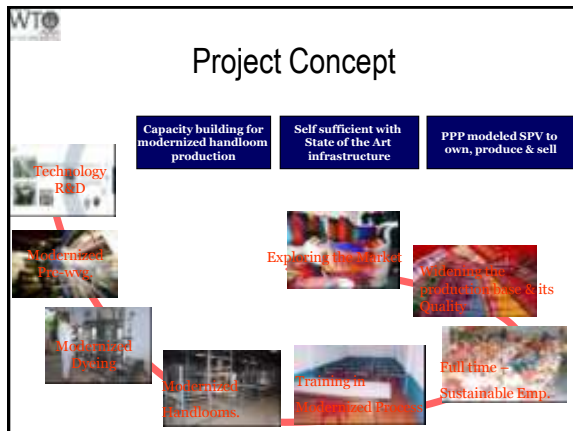
CONCEPTUALISATION OF THE PROJECT

DESIGN CONCEPT

The design concept weaves itself from the warp of the manufacturing process and weft of the intent of ILFS to enhance/encourage the development of Cottage Industry.

- To design a Handloom Park in order to retain and sustain the conventional art of weaving at a consolidated location.
- The vision is to turn an age old-home based weaving tradition into a centralized and community based Pochampally ikat art to ensure quality and longevity.
- The envisioned layout shall be a humble outcrop with interspersed common, semi-enclosed, enclosed and open areas – courtyard designs regionally called as "Manduva-Chavidil" spaces.







Kick start of Activities

- Production with 200 looms and to start 500 looms by end of Oct 09
- Tie & dye through cabinet dyg. & open tub
- Expanding base for 'Chikat' brand products in the Domestic & Ikat Art in the export
- Developing 300 new programmes through expert designer& displaying in International/national trade fares
- Exclusive R&D team working in Product/design/colour combination/fibre blends etc.



Socio-economic significance

- Pochampally Handloom Park

- Sustainable direct employment to over 5000 artisan families
- Prevents the migration of rural people to urban areas for employment and work
- Sustain & strengthen traditional art & skills
- Modernization & mechanization in dyeing process without imbalance to environment
- Modernized looms to reduce sound pollution, drudgery & to enhance productivity



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Thank you

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A CASE ON BALUCHARI SILK

Dr. T.P. GHOSH
&
Prof. K. RANGARAJAN



A Brief Introduction to Baluchari – 1

- What Is Baluchari
 - An exquisite silk woven in handlooms by highly skilled designers and weavers having generations of experience (in draw-boy-loom)
 - Currently at Bishnupur (200 km from Kolkata, Dist. Bankura) of West Bengal
 - **Design:** Silk brocaded narrative figurative motifs inspired by the Persian style, Hindu mythology and floral *kalka or kunjās* (conventional lotus buds)

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A Brief Introduction to Baluchari – 2

- **Places of insertion of motifs:** Border, body, corner and in the end piece (called pallu) of the saree
- **Product Mix:** Mostly saris, but made-to-order *salwar* pieces and curtains as well
 - Occasionally Rumals (square shawls), Scarfs and sashes, other dress materials, etc



A Brief History of Baluchari – 1

- A craft of 17th & 18th Century Bengal, patronized by the *Nawabs* of Murshidabad
 - Weaved in looms set up with indigenous technology using beetle nuts and threads
 - Primarily Persian designs weaved on princely dress materials and *saris*
 - Weaved by artisans of the riverine village *Baluchar* (near the then *Nawabi* capital of Murshidabad), meaning “Village on the Strand of sand”
- The patrons, and consequently the art, began to decline after the victory of Robert Clive at the 1757 Battle of Plassey, and subsequent British successes.

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A Brief History of Baluchari – 2

- Even Nawab Murshid Kuli Khan was a great patroniser of Baluchari
- Things don't change over-night even these days of IT – and they changed at even slower pace in the past
- The last Baluchari weaver at Baluchar village near Murshidabad died in the 1890s at an age of 80+ years.
 - 130 years (4+ generations) after the 1757 conquest of Robert Clive
- Back to Independence (1947)
- Government initiative of 1950s to revive past crafts

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A Brief History of Baluchari – 3

- As part of that
 - *Baluchari* design was made available to a few regions of the country traditionally known for silk weaving (like Bishnupur, Murshidabad/Malda, Benaras, etc.)
 - Succeeded only Bishnupur (later in Benaras as well in a limited way)

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WTG A Glimpse of Baluchari Designs.....



WTG A Glimpse of Baluchari Designs.....



WTG Location of Baluchari

- The name *Baluchari* is derived from the word “*Baluchar*”,
 - an area comprising of several villages near Behrampore in the district of Murshidabad in West Bengal.
 - The present name of Baluchar is Jiagunj
- In Bengali “*balu*” means sand and “*char*” means bank of a river
- Saree originated in ‘*Baluchar*’ is known as ‘*Baluchari*’

WTG The Product and Uniqueness – 1

✗ 1) The base material:

- ✗ Two types of silk one for warf (*tana or shana*) and another for weft (or verna)
- ✗ Quality of silk yarn for warf is superior to that for the weft for carrying weights of the material.

✗ Weaving:

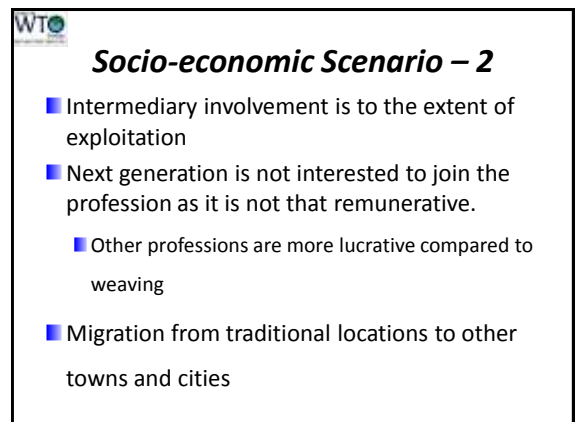
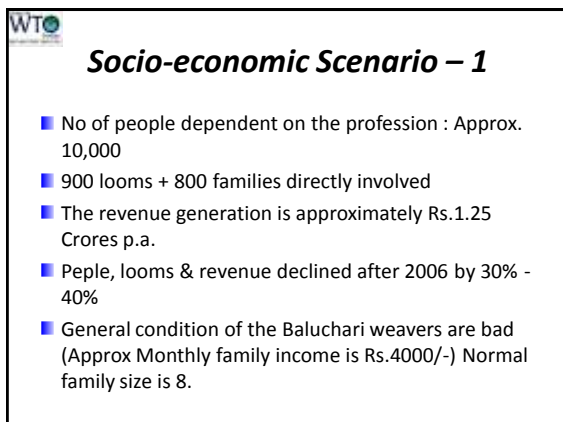
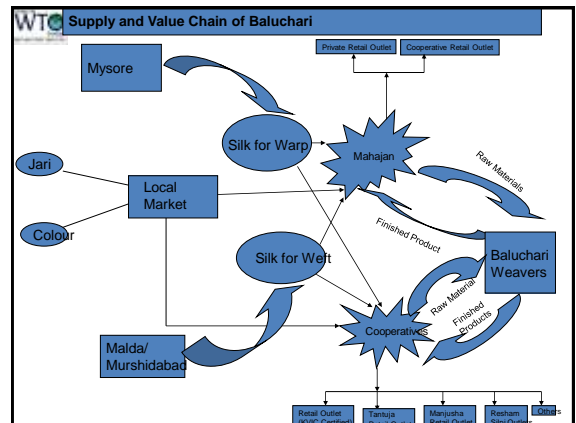
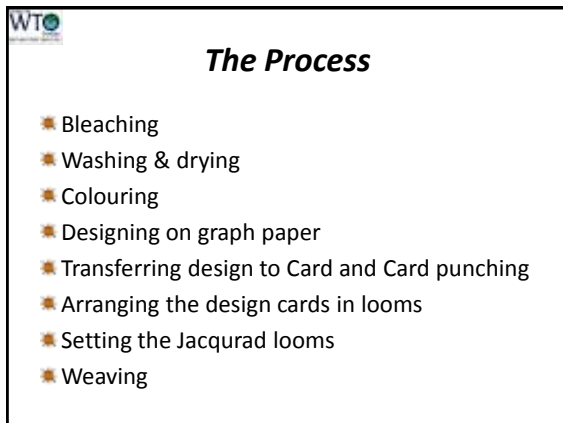
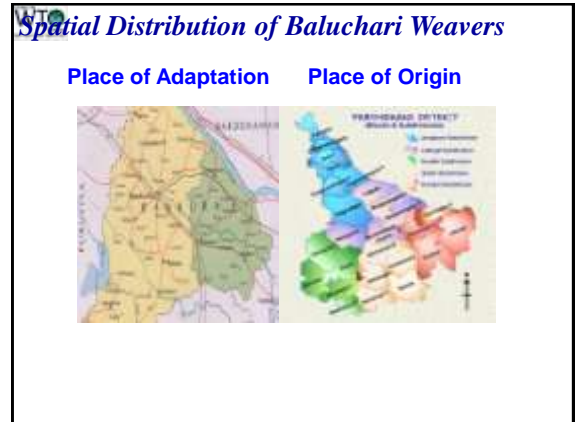
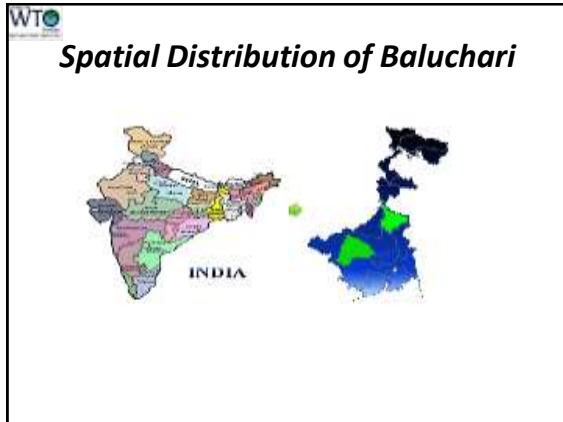
- ✗ Silk yarn is dyed before weaving in draw-boy-loom.
- ✗ The importance of the process is that these sarees can stand any amount of washing

WTG The Product and Uniqueness – 2

✗ Human Factor:

- ✗ The intricate design and its implantation requires skill acquired over a period of time.
- ✗ The human resource factor here acts as a unit of combined resources. (1 HR Unit = 5 skilled labourers in different areas who work sequentially or simultaneously)
- ✗ Designers play a critical role

*Baluchari as a Potential Product
for GI*





Problems of Fake Product

- Baluchari manufactured in India (outside Bankura and Murshidabad) and sold in India (e.g., Nusratpur of Burdwan, Benaras using cheap Chinese silk).
- Baluchari manufactured outside India and sold in India (esp. Bangladesh – reported by some weavers & traders)



Specific Issues & The Way Forward



The way forward

- Pre- GI Stage
- GI Processing Stage
- Post- GI Stage



Pre- GI Stage

- Collection of historical evidence, documentation of processes-geographical locations, uniqueness, etc
- Socio-economic survey to assess the aspects and prospects of protection of TK, benefit sharing, etc
- Exploration of possibility to organize artisans for owning of protecting GI



GI Processing Stage

- Identification of Law firm
- Technical support
- Filing of GI



Post GI Stage

- Institutional Mechanism for Enforcement and monitoring of GI
 - Owning GI in the name of a govt. dept./body does not help
 - More than 60%
- Post GI positioning (promotion, positioning, branding, etc)
- Hand holding for Marketing (Domestic & International)
- Monitoring of the Functioning

Thank you

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History of Baluchari

Two Distinct Phases of Baluchari

First Phase

- 16th Century (?) to the first quarter of twentieth Century in Baluchar (present Jagunji), Murshidabad.
- Some of the prominent weavers were Shri Dubraj, Shri Gostha Karmakar, Shri Jogikar, Shri Prabhas Sarkar, Shri Baishnab Kalitha, Shri Shashibhushan Dutta, Shri Mrityunjay Sarkar, Shri Hem Bhattacharya and others.

Second Phase

- In mid Twentieth Century till present time in Bishnupur and adjoining areas of Bankura.
- Some prominent people who contributed in this phase are Shri Subha Tagore, Mrs. Kamala Devi Chattopadhyaya, Shri Bhagwan Das Sharda, Shri Akshya Kumar Das and Shri Gaur Mohan Diashi.
- Glorious period: 1991-2000

Traces of History

- ✦ Since its inception it has undergone several changes in style and technique in the intervening ages retaining its unique characteristics.
- ✦ An extraordinary talented weaver named Dubraj (sample of his work is reproduced in the next slide) of Behrampore was pivotal in raising the Baluchari tradition to its zenith.
- ✦ The quality of Dubraj's work was next only to Kashmir and Banaras (West Bengal District Gazetteers- Murshidabad, 1914 p.162).

Early Baluchari Design Made by Dubraj



A Descriptive Note from the Gazetteer

- The Gazetteer describes Baluchari alternatively as: Baluchar Sari or Baluchar *butedar*.
- A quote from the Gazetteer: "These saris are made 10 cubits long and 42 to 45 inches wide. The price varies according to quality from Rs.10 to Rs. 50. For the cheaper articles untwisted and ill-sorted raw silk is used; the number of threads used for the warp is also less; the weft is loosely woven" (O'Malley, 1914).



A Descriptive Note from the Gazetteer

- “A cheap Baluchar butedar saree can be woven in a week, but a valuable one takes three to four months weaving. Sometimes these sarees are made without *anchals (pallu)*, but only with four *kalkas* or *kunjas* at the four corners. Such sarees of the same size are somewhat cheaper (Rs.8 to Rs.40 instead of Rs.10 to Rs.50)” (O’Malley, 1914).



Decline of Baluchari in Baluchar, Murshidabad

- ✦ Decline of Bengal silk industry
- ✦ Competition from Punjab Fulkari and sarees from Banaras (N. G. Mukherji, 1903, Monograph on the Silk Fabrics of Bengal)
- ✦ Change of taste of upper middle class Bengali ladies (N. G. Mukherji, 1903)
- ✦ Product Based Mahajani system (N. G. Mukherjee, 1903)
- ✦ Shifting from silk weaving to cotton weaving (1903)
- ✦ Lack of enthusiasm among the next generation of weavers. (Biswendu Bagchi, 2007 *Murshidabader Baluchari Saree, Balaposh O Karmichael Rimal, Jhar, 3rd Edition, Murshidabad* (in Bengali))



National Seminar on Geographical Indications

PROF.VIVEKANANDAN-DEAN-RGSOIPL-IIT
KHARAGPUR
AYESHA SHAUKAT-CONSULTANT

GI- WHERE DO INDIAN INTEREST LIE?
IIFT-NEW DELHI
25 September 2009



IN THIS SESSION

- ABOUT THE STUDY
- BACKGROUND
- GI FOR BIDRI
- IMPACT
- CHALLENGES



ABOUT THE STUDY

- THIS STUDY WAS COMMISSIONED BY CENTRE FOR WTO STUDIES-IIFT
- UNDERTAKEN BY PROF.VIVEKANANDAN AND MS.AYESHA SHAUKAT –CONSULTANT ON GI
- IMPACT STUDY ON THE GI OF BIDRI BY KARNATAKA GOVERNMENT AND IMPACT ON BIDRI ARTISANS AT BIDAR AND IN AP
- INVOLVED A SURVEY WITH VARIOUS STAKEHOLDERS IN GI PROCESS IN KARNATAKA AND ANDHRA PRADESH



BACKGROUND

- With the advent of GI as a modern IP process the focus is no longer on the individual inventor and knowledge creation as an activity is spread across the hierarchy of a group of knowledge creators or community.
- *"Innovation is not a destination, it is a process, and the human network is a critical element of competitiveness for companies, but not only for companies"*
- Borrowing from Indian historical parlance, this is the resurgence of the "Sangha" style of functioning.



BACKGROUND

- GI and similar forms of protection have their own geographical origin in that they have been historically associated with continental Europe, where the practice of associating certain food products with certain regions has been in vogue for a long time.
- This practice traces its roots to the concept of *terroir*, which literally refers to the soul of the soil and according to which the distinctive features of foodstuffs may be primarily attributed to the soul or the natural flavour in which it is grown.
- The extension to other industrial products has its own impact and Bidri registration is a proof of such impact



BACKGROUND

- In the Indian context this legislations comes as timely legal lever to protect it vast array of G.I products across diverse categories of goods, ranging from but not limited to product categories such as handicrafts, textiles, spices, and agro products.
- Heritage and Culture rich economies such as India have much to benefit from this as the G.I right provides them a lever to protect products of cultural value



BACKGROUND

- The G.I legislation in India is a great fillip to the Crafts Segment.
- It has been estimated that the craft sector is the largest decentralized or unorganized sector of the Indian economy with over twenty-three million people involved in it.
- It contributes heavily to foreign exchange revenues as well.



GI TO BIDRI WORKS

- Bidri Craft derives its name from Bidar, the North Eastern District of Karnataka
- Bidri is a 400-year old craft that carries a nebulous history, with supposedly Persian origins involving the use of gold and silver inlay in decorating objects made of steel and copper.
- . The difference however is the use of Zinc as a primary metal which is peculiar to India. In the last two centuries, the identity of the art has been closely associated with the Bahamani dynasty of the Deccan.



THE BIDRI PROCESS

- The basic metal of the craft is an alloy of Zinc and copper mixed in the proportion of 16:1.
- The melting temperature of this metal alloy is 800F. Such an alloy is known as the 'white alloy' because the ratio of copper used is very little.
- Copper is mixed with zinc in the above stated proportion of 1:16 to provide the required base for being turned jet black when subjected to the ultimate oxidization process.
- Only pure silver (99 per cent) should be used so that it not tarnished in oxidization



THE BIDRI RANGE

- Phoolzadi Box
- Phoolzadi Box- small
- Aftaba Phoolzadi work
- Flower vase Tarkashi work- Mughal Design
- Buddha Face
- Flower vase Mehatabi work
- Trunk up Elephant Phoolzadi work
- Painted Moghal Box Tarkashi work
- Box Mehatabi work
- Nandi Phoolzadi work
- Cigar box sheet work
- Ashtray Phoolzadi work
- Office set Mehatabi work
- Hexagonal box Mehatabi work
- Round tray sheet work



SOME BIDRI IMAGES





THE BIDRI GI -SNAPSHOT

- **Name of the Applicant**
- Managing Director, Karnataka State Handicrafts Development Corporation Limited.
- **Class 6, 21, & 34**
- **Type of Goods: Handicrafts**
- **Name of the Geographical Indication (Particulars)**
- It is produced in Bidar Town in Bidar District in Karnataka.
- Bidar city wherein there is a concentration of Bidriware articles of has an area of and population of 926 kms and population of 3.31 lakhs.



THE GI TANGLE

- Town of Bidar lies in North Karnataka, on the border that separates the state from Andhra Pradesh located about 120 kms from Hyderabad.
- When the reorganization of the States occurred in the 1950s, this region was split up between the states of Andhra and Karnataka.
- The practice of this craft as it stands today is prevalent both in the states of Karnataka and Andhra Pradesh, with a few variations in other Northern states as well.
- The ambiguity arises as the G.I application has been filed on behalf of the artisans in Karnataka, with none of the Hyderabad artisans being included in the G.I application process.



THE IMPACT OF BIDRI GI

1. . KHDC is a statutory body that is the registered proprietor of the Bidri G.I that in turn confers the Authorized User status on the artisans of Bidar.
2. The KS HDC has filed for 15 G.I s as on date. The activities are funded by the State Government and the governance is a state led activity.



THE IMPACT OF GI

- Our observation leads us to conclude that the interest of the artisans stands well represented.
- The G.I application was filed on behalf of the artisans after effecting necessary awareness creating measures and the artisans were kept involved in the G.I application process.
- However, the artisans were unaware that the G.I was granted or were not able to conclusively state that there were definitive benefits accrued vide the G.I.
- This may be attributed to the fact that the authorized users are not in geographical proximity to the applicants domicile



THE ADVANTAGE FOR BIDRI ARTISANS

- KHDC has established a handicrafts complex in Bidar where the artisans are meticulously trained from time to time, awareness programs are conducted, skill and up gradation techniques are introduced from time to time.



ADVANTAGE –BIDRI IN KARNATAKA

1. KHDC has also set up a well equipped complex in Bidar that includes a procurement office.
2. The office is in charge of providing raw materials like zinc and silver at 50% subsidy to the artisans. They have also provided a loan assistance scheme to the artisans. Tools are also provided by the government and replaced from time to time.



ADVANTAGE –ARTISANS ?

1. A strong observation on this point would include that many of them bear Bidar origins, but have migrated to Hyderabad and continue to parties the trade for reasons attributed to better logistics.
2. At present very few artisans practice the trade per se in Hyderabad. Most have migrated to other diverse occupations. Some have retail outlets in Hyderabad whilst continuing to produce in Bidar.
3. It was also observed that some of the retailers were stocking cheap counterfeit products in the stored in Hyderabad. In view of the aforesaid, we are not able to make a strong case for the G.I.s to be extended to the Hyderabad artisans without further deliberations with officials and artisans on both sides of the State.



CHALLENGES

- Defining the Role of the State in the G.I process.
- In India, G.I.s are part of the Intellectual Property legal corpus with the concept of collective rights through the grant of the ownership to the registered proprietor who shall represent the interests of the producers and the rights of the registered user .
- In the Indian legal framework as has been observed the State and its agencies are predominantly involved both in the application process as well as in the post implementation process.



CHALLENGES -

- This is a contra observation vis a vis the development in the west, particularly in countries like France. The states take a rather tacit role and the G.I governance devolves upon the producer organization.
- Given the socio-political dynamics of the Indian system would this make the governance of G.I.s more efficacious?



CHALLENGES

- Given the backdrop of the Indian rural clusters that still in many aspects lack a cohesive structure compounded by the fact that they that still largely depend upon the government for funding and regulation , the role of the Government as an active stakeholder becomes imperative.
- The Bidar case study largely demonstrates this and serves as a case in support.
- In contrast, it bears noting that producer organizations such as the Navara Rice Producer organization have been unable to achieve the kind of G.I milestones that state led G.I products have established.
- In the Indian context, a multi stakeholder exercise would be the preferred approach, given the intrinsic multi faceted that needs to be addressed.



CHALLENGES

- Reconciling Cross Border G.I .Disputes.
- Unlike the EU directives that provide for a mechanism that allow member states to have a joint haring of G.I.s, the Indian legislation makes no provision for member states to effect a registration where G.I.s can be viewed or two states jointly.
- Given the fact that the intra states borders have been realigned over time, and many G.I worthy products lie across two states, as has been witnessed in the case of the Bidri, this issue has implications whilst determining question of G.I propriety



CHALLENGES

- Notably two determinants are used in validating the claim for a G.I.
- The situs or the geographical locale and origin of the product; the other critical factor is the traditional endeavor aspect-whether the community has been traditionally engaged in the manufacture of the craft line.



Challenges

- Very often the process of manufacture is a closely guarded trade secret handed down over many generations.
- In this regard, we would also strive to lead a discussion on the use of the G.I lever in protecting traditional knowledge, the conceptual irregularities in reconciling both subject matter and to lay down broad parameters in distinguishing one from the other.



A last word

- Bidri GI is a case in point of strategic use of IP
- Not to forget R.K. Narayanan's story
- Thank You
- vivekvc2001@yahoo.co.in





BRASS METALWORKS OF MORADABAD: PERCEPTIONS ON ADVANTAGES OF GI REGISTRATION

Prof. Sudhir K. Jain
Ms. Chitranka
Mr. V. J. Thomas

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INTRODUCTION

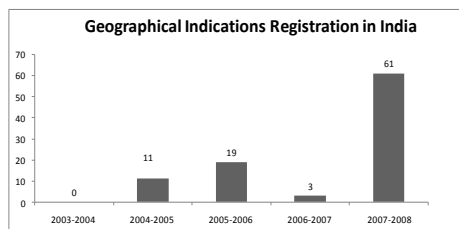
- Intellectual Property (IP) has assumed unprecedented significance in the world markets and knowledge-based society of our times.
- TRIPS defines GI as:
“any indication that identifies a product as originating from a particular place, where a given quality, reputation or other characteristics of the product are essentially attributable to its geographical origin”.

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Geographical Indications Registration in India: Approx.112 (+ 73 in process)



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MORADABAD

- Moradabad is a city in Uttar Pradesh state of India, worldwide famous for its Brass Metal Handicrafts since ancient times.
- Today, it is said to house around 29% of the metalwork-artisans in India.

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Products



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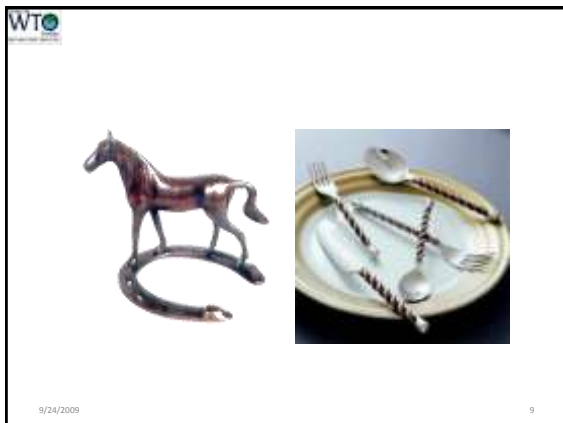
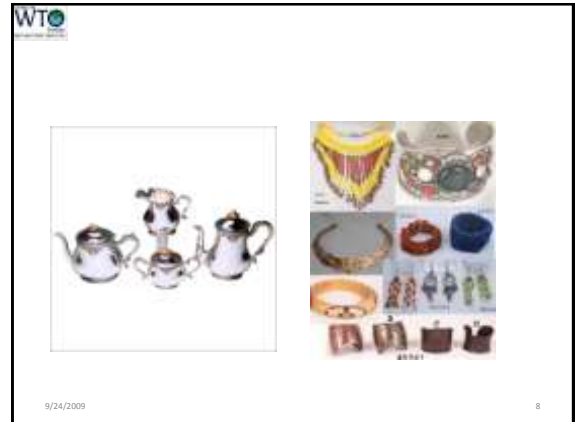


Products



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BACKGROUND

- Moradabad's brassware is exported mainly to USA, Britain, Canada, Germany and Middle East Asian countries.
- There are about 850 export units and 25,000 metal craft industrial units in the district.
- Aggressive registrations of GI in India (112 registered & about 73 are in process)
- Causes for non-registration (or delay in registration of Moradabad's brass handicrafts and other metal craft – Lack of perception of advantages or any other reason?

OBJECTIVES

1. To assess the possibility and scope of registration of Moradabad brassware under the GI Act of India
2. To find out the GI related awareness level of Moradabad's brassware industry stakeholders
3. To assess the knowledge of Moradabad's brassware industry stakeholders about the uniqueness of their handicrafts.
4. To find out the hurdles, if any, faced by the Moradabad brassware craftsmen or entrepreneurs in registration of their GI
5. To study the efforts and initiatives of Moradabad's stakeholders towards registration of their GI.

METHODOLOGY

- Secondary data was used to understand the background and basic framework of the industry and to plan the research design to conduct the study.
- Semi structured in-depth interviews, Focused Group Discussions and Questionnaires were used for primary data collection.



SAMPLE SIZE

Stakeholders	Sample Size
Manufacturers Exporters	40
Traders (Wholesalers & Retailers)	45
Small Manufacturers (Karkhanedars)	109
Artisans	148
Total	342

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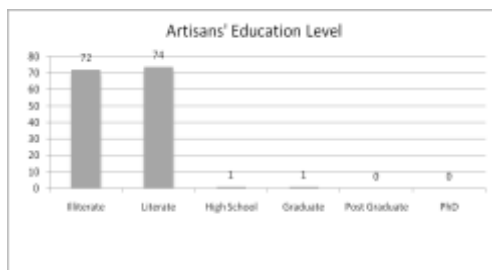
SAMPLE CHARACTERISTICS

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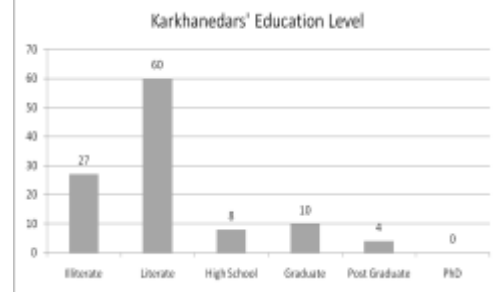


SAMPLE CHARACTERISTICS



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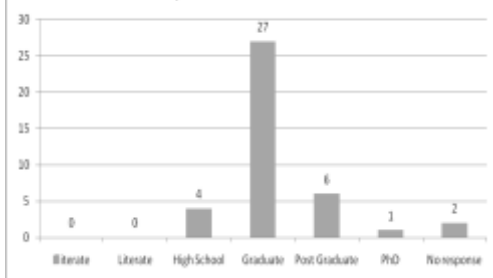


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Exporters' Education Level

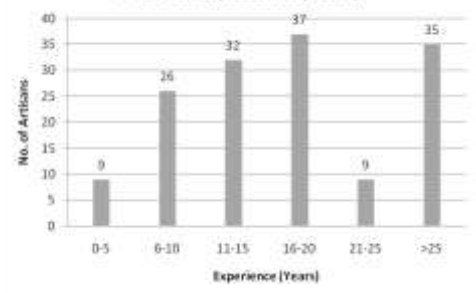


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Artisans' Experience (Years)



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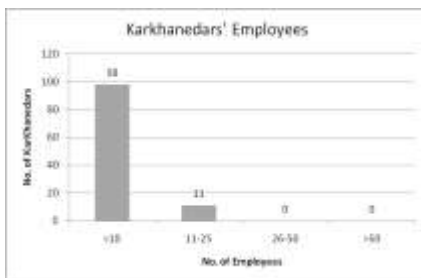
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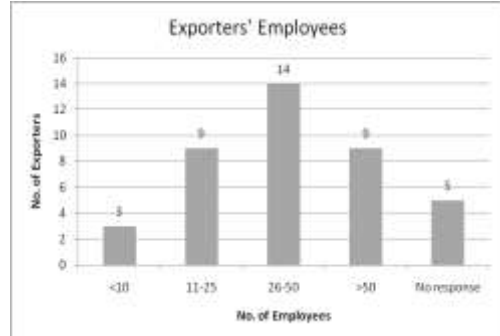
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SURVEY FINDINGS: INDUSTRY

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SURVEY FINDINGS: INDUSTRY

- Demand is highest for non-brass products
- Exporters have diversified into gift items, furniture, cutlery etc.
- Designs follow western markets and change every season.
- Exporters have shifted from traditional engraved brass articles due to rise in the prices of brass.

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- Artisans and *Karkhanedars* are good at creating and replicating designs on different metals and metal combinations.
- The focus has shifted from traditional heavy products to western, utility, light and cheap products.
- Exporters maintain their competence in various finishing techniques through trade secrets.

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- There is no major local competition for Moradabad products.
- Most exporters mention China as a major competitor internationally.
- *"India is used by international customers as a sampling country and the bulk orders go to China, because we do not have the infrastructure to produce in large volumes with quality, on time"*

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YOUTH OF MORADABAD AND TRADITIONAL OCCUPATIONS

- Child Labour is banned.
- Literate youth are disenchanted with traditional jobs but ill-equipped to handle modern vocations.
- Recession has had a major impact on exports. Most of the rickshaw pullers, auto drivers and labourers today were artisans earlier.

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AWARENESS OF GOVERNMENT SCHEMES

- Artisans, Karkhanedars and Traders are not aware of government schemes.
- The bigger Exporters are not inclined to utilize the schemes.
- Smaller exporters are hesitant because of cumbersome bureaucratic procedures.

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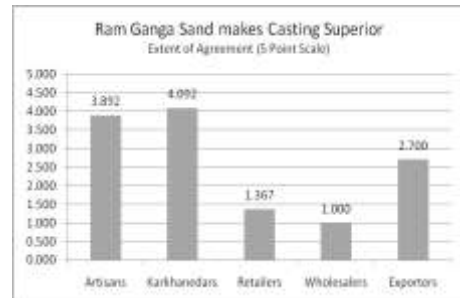
SURVEY FINDINGS: UNIQUENESS OF MORADABAD BRASSWARES & METALCRAFTS

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SURVEY FINDINGS: UNIQUENESS OF MORADABAD'S BRASSWARES & METALCRAFTS

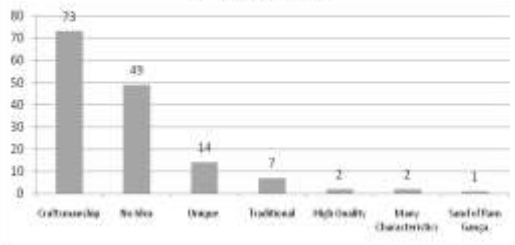


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Unique Features of Moradabad's Metal Craft Products (Artisans' Opinion)

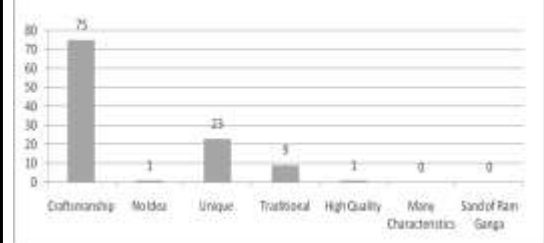


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Unique Features of Moradabad's Metal Craft Products (Karkhanedars' Opinion)

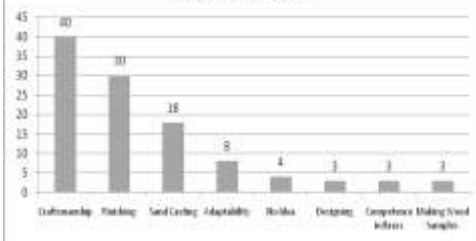


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Unique Features of Moradabad's Metal Craft Processes (Karkhanedars' Opinion)



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- The sandy soil of Ram Ganga River of the place was suitable for molding brass which might have been an important supporting factor in establishment of brass industry in this region.
- Today, the soil is not essential for brass works.
- A majority of respondents told that craftsmanship of Moradabad's artisans is the unique feature of the brass handicrafts and other metal craft products of Moradabad.

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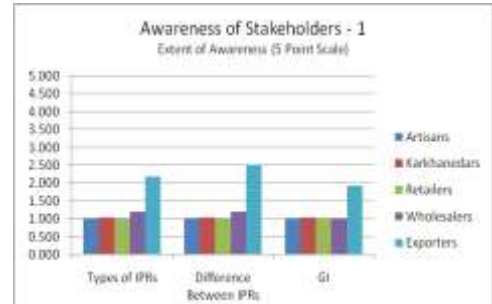
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SURVEY FINDINGS: AWARENESS OF GEOGRAPHICAL INDICATIONS

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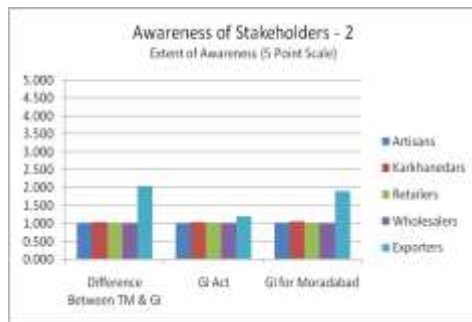
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GI related Awareness of Stakeholders



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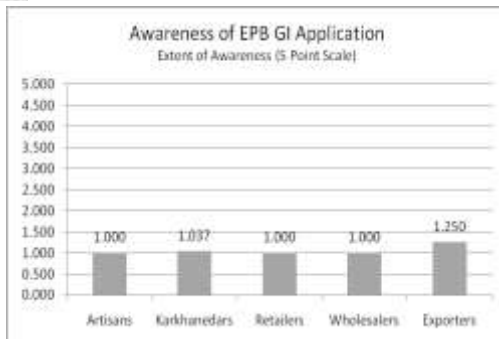
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GI Application by UP Export Promotion Bureau



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SURVEY FINDINGS ON AWARENESS: KEY OBSERVATIONS

- The level intellectual property related awareness is quite low among the various stakeholders of Moradabad metal crafts industry.
- As most of the stakeholders indicated their lack of awareness about Geographical indications, the chances of their utilizing it for the benefit of their firms and industry are minimal.

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- Even exporters, who are widely traveled, are not very conversant with this concept.
- There is a lack of clarity as to the benefits offered by GI registration.

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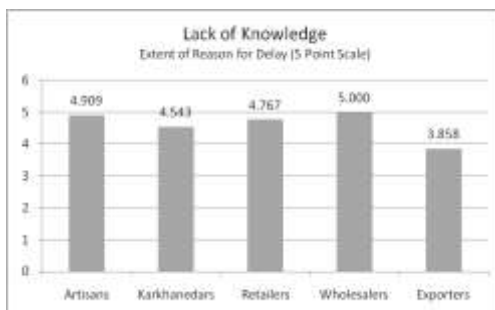
HURDLES IN GI REGISTRATION

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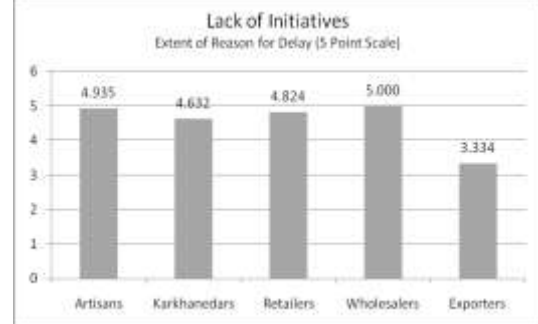


Hurdles faced by Stakeholders in Registration of their GI



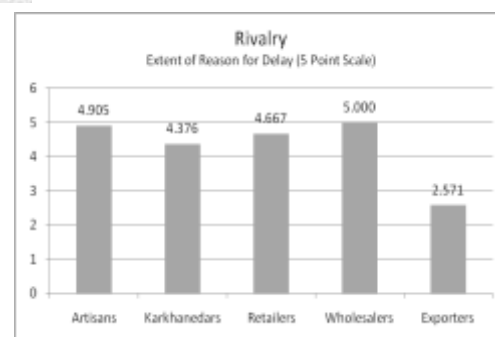
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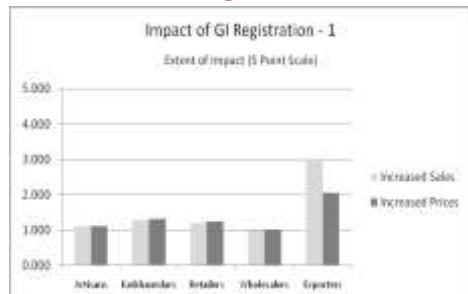
PERCEPTIONS ON ADVANTAGES OF GI REGISTRATION

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Perception on Advantages of G.I. Registration

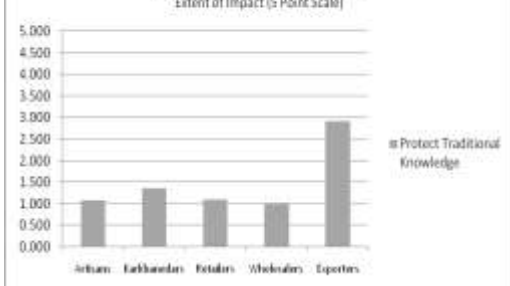


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Impact of GI Registration - 2

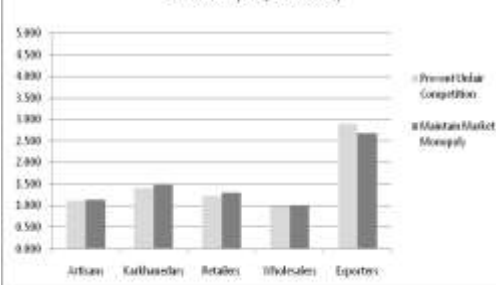


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Impact of GI Registration - 3

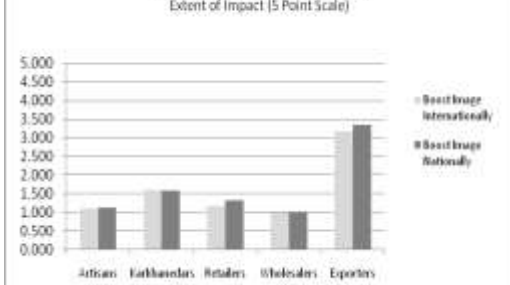


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Impact of GI Registration - 4

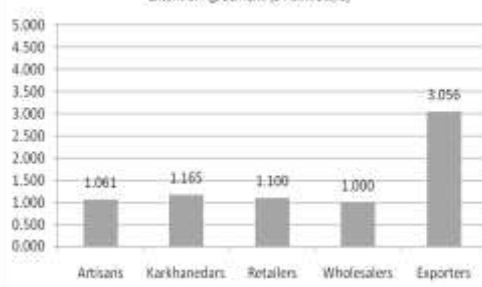


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Marketing Initiatives will make GI more Effective



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CONCLUDING REMARKS

- Survey results indicate very low level of awareness among various stakeholders of Moradabad's Brasswares & Metalcrafts industry.
- It seems that there is a need for more sensitization on the significance of GI in the regional as well as international context.
- GI can become one of the tools to empower local economy.
- It may help in creating a better image for Moradabad's products in international markets.

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Building Brands through Geographical Indications

Anuradha Maheshwari
Dean -IIPS
24th September, 2009



To create something from nothing, in all the natural world is a uniquely human ability. Using our minds we originate works of art, generate inventions, accumulate knowledge and discover truths about the world we live in " What sets the information age apart from prior periods in history is price tag we put on these human intellectual creations.

Knowledge Power – Renee Marlin Bennett

Scheme

- *Understanding GIs*
- *GIs as developmental tools*
- *GIs as marketing tools*
- *GIs as brands*
- *Consumer Protection*






Ethnicity

- People– regionally unique- reflected in looks, goods & trade coming from that region
- So regional goods are unique & distinctive
- Goods like people acquire a reputation linked to the region





September 24, 2009 Anuradha Maheshwari

Geographical indication

- Any indication
 - name or geographical name
 - figurative representation
 - expression
 conveying territorial origin or source of goods
- Any indication conveying unique characteristics of a region - quality, reputation characteristic of a Geography- (TRIPS)

September 24, 2009 Anuradha Maheshwari

Features of GIs

- Collective community rights- protects groups of producers
- Club goods
 - Exclusive (no individual right)
 - Non-rivalrous (does not diminish 1 producers rights vs another)
- No right to assign- increases scope of protection
- Right in perpetuity- remains with the community
- Knowledge underlying GI remains in the public domain
- Protects goods that are already famous- reputation must pre-exist
- Functions like a trademark

Conditions for GI protection

- Specificity linked to territory- (geog characteristics- climate, soil, process know how, craft etc)
- Consumer acknowledgement- name & reputation acknowledged by trade- preexisting
- Coordination & legitimization of processes between supply chain, institutions & consumers
- Requires more than mere protection of geographical names- triple association of place-product-quality

Benefits of GI protection

- Protects interest of honest producers & traders
- Prevents unfair competition, cartelisation & commercial abuses- excludes unauthorised use
- Promotes domestic GI in the export markets
- Improves quality of products in the market place
- Protects consumers from deception, guarantees quality
- Community of producers prosper

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GIs- A Development Tool

- Stimulates growth and innovation
- Ensures regular income flow in exchange for guarantees. Bidri workers, Tea planters....
- Leads to industrialization & standardisation of production processes - wine, ham, cheese etc
- Ensures greater global market access
- Encourages diversification of production,
- Preserves biodiversity, local know-how & TK- Aranmula Kanadi, Textiles
- Promotes socio-economic upliftment
- Empowering women- Darjeelin Tea & Phulkari

GIs prevent delocalisation of production

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Bidri Works




Community Development

- 800 year old art form & important handicraft export
- Persian craftsmen influenced artform – Bahamani kingdom
- Contains patterns made of zinc, copper with silver inlay work.
- Sand sourced from fort of Bidar gave metal artefacts its lustre
- Painstaking skilled labour involved- priceless
- Unorganised for many years-artisans exploited- very poor
- NABARD started Bidri cluster development program
- Set up Bidri Colony in Bidar in 2002
- Led to formation of self help artisans groups
- Karnataka Handicrafts Development Corpn. - GI tag in 2008

Developmental Role- Tea Board



- Darjeeling Logo designed '83
- Registration 1986
- Logo & word regd. under TMA
- Regd. under GI registry
- Also sought protection in UK, US, Japan, Ireland & others
- Hired Compumark- International watch agency to monitor infringement.
- Spent USD 200,000 in 98-02 for same
- Yields increased-545Kg/ha(03) to 650kg/ha in '05
- Protected status in 21nations- 3 pending




GI Promise for Consumers




- Seal of origin - GIs point to a source of production
- Certification guarantees the origin - traceability
- Quality indicators - GIs point to goods with special qualities &, reputation from a particular region
- An authenticity certificate - conveys definite messages linked to:
 - A territory
 - A history
 - Traditional knowledge and know-how

This promise appeals to consumers

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Consumer Preference for GIs




Perceived value linked to

- Origin- exoticness attached to region
- Reputation of the goods & region
- Uniqueness of product- not common
- Traceability of the raw material of the produce
- Traditional & indigenous knowledge
- Preferences related to palate, aroma, physical appearances, etc- agricultural goods

Consumers willing to pay premium prices for GI products



Premiums prices



- 40% of European consumers ready to pay a 10% premium price for GI products- *EC Study 1999, tea, champagne*
- 75% of Italian consumers ready to pay a 20% premium price -*Etude Nomisma Qualivita de '03*
- Unique attributes of geography- like in the case of specialty salts – *gourmet cooks willing to pay \$80 a pound for such varieties versus 30 cents for common table salt* – Indian black salt, Portuguese Algarve salt,...
- History & tradition associated with production process- Parmesan cheese & Parma ham.
- Mystique elements- process secrets with legends & folklore- Parma Ham, Aranmula Kannadi




GIs- A marketing Tool




- Would Moët & Chandon be so sought after if it was not a Champagne?- Builds brands
- GIs bring a special added value to both producers and consumers
- Allows producers market recognition, differentiate their offerings & gain legal protection
- Maintains supply chain integrity- Champagne, Parma ham
- Establishes global partnerships


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GI Brands



- Some regions have become synonymous with high quality products- Champagne, Havanas, Darjeeling, Basmati, Swiss watches, Japanese electronics, German Auto
- Building image of quality helps in quick consumer acceptance.
- Branding exercise of National Federation of Coffee Growers of Colombia –“ Buy Colombian when buying Coffee”- “richest Coffee in the world”-“50 % tax bracket 100% Colombian Coffee”- No Colombian, no thank you”.
- By 80's awareness reached 96%, 62% believed Colombia grows the best coffee and people were willing to pay 15% premium on Colombian coffee





Cuban Habanos





- Origin can be traced to 1492 when Columbus arrived on the shores of Cuba
- Cohibas ancestors of Habanos smoked by natives
- Quality of tobacco leaves because of soil
- Premium cigars using 5 different kinds of leaves & special process employed to make cigars
- Protected mark since 1912 all over the world with turn over in billions of dollars



GI Brand Dilution



- When the value of a trademark or indication gets diminished.
- Dilution takes place through blurring, tarnishing and genericide- Feta Cheese.
- When popular geographic designators are used generically by many to the extent of registering it as a TM- Bikaneri Bhujia(Pepsi Snacks)
- Local artisans and businesses are the losers .
- Commoditised products consumers losers – Persian carpets, Pashmina Shawls, Italian restaurants, German beers- difficult to ascertain origin



Dilution Cases



- Basmati rice – confusion between Indian & Pakistani- designated only very recently. Copied – Texmati, Calmati, Kasmati etc.
- 100 TM cases in over 30 countries over 'Basmati'
- Darjeeling- actual production capacity is 10 million kgs but actually 40 is sold. Most from Srilanka and kenya -(Pure Darjeeling)
- Italian Parma Ham Trade Consortium sued Asda a UK store owned by Walmart



GIs as certification marks



Certification Marks - Scope of protection:

- Protection of a name in combination with a logo
- Absolute protection of the name for all legitimate producers
- Great marketing tool
- Right on the name even if not used-prevents misuse
- Often guarantee against "genericide"
- Enforcement: often mix of public & private actions
- Indication of certain standards & quality
- India offers GI Certification Mark under TM registration
- Irish linen, Stilton Cheese, Darjeeling tea –GIs with CMs
- No guarantees against name used in translation and used with expressions like "style", "type",

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GI as collective marks



- A collective mark belongs to a group or association of persons & its use is reserved only for the members of the group
- It is a TM intended to distinguish the goods & services offered in the market place
- GI is a collective indication of public ownership of a group or assn.
- Functions like a collective TM
- Do not certify or indicate goods to be of a particular quality

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GI & Consumer Protection



- Awareness & information on IP in geographical products
- Registration of GIs to be actively encouraged
- Public education on GI registered products- prevents deception& confusion
- More promotion on GI marks & Indications- article 23
- GI stakeholders- producers/organisations, Government, local communities, regions to be more proactive in protecting rights, supply chain integrity
- Without GI protection-threat of becoming generic- communities & consumers both suffer
- Better enforcement & redressal needed

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THANK YOU!!!

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National Seminar on Geographical Indications

MANAGEMENT OF GEOGRAPHICAL INDICATIONS

SUNITA K. SREEDHARAN
SKS Law Associates, New Delhi
 24 September 2009



GI FOR A LIVING

- Crystallization of traditional practices of a community
- Immediate function of
 - Biodiversity
 - Political
 - Socio-economic factors
- Usually unorganized sector
- Variations in quality

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GI FOR THE MARKET

- Premium product for premium market to compensate for intense labour
- Quality – therefore quality control
- Uniformity / predictability – element of standardization
- Distinctiveness - even for creative work within the ambit of the GI specifications
- Continued protection – renewals / legal processes including agreements

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MARKET EVALUATION OF GI

On territorial reputation

- International e.g. Kashmir Pashmina
- Demography e.g. Pochampally Ikat
- National e.g. Lucknow Chikan
- Regional e.g. Shawls of Nagaland

On other

- Religious / spiritual e.g. Mysore sandal agarbattis

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MARKET EVALUATION....

- Other criteria for market
- Seasonality of the product
- Availability in off-season
- Demand vs Supply
- Premium pricing?
- Storage and transport
- Existing markets and marketing strategy
- Other IPRs covering the GI

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BRANDING AND BRAND POSITIONING

DUE DILIGENCE

ADVERTISING AND VISIBILITY INCLUDING SURROGATE ADVERTIZING

PACKAGING AND PRICING

ACCESSABILITY AND AVAILABILITY

WATCH CELL INFRINGEMENT, QUALITY CONTROL, MARKET TRENDS

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THANK YOU

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National Seminar on Geographical Indications

Geographical Indication in a Flat World: revisiting the current scenario of protection and exploitation

P.K. Ghosh & Babita Sinha
Indian Institute of Technology Roorkee
24th September 2009



Geographical Indication

A geographical indication is used to identify goods that have a specific geographical origin and possess a quality, reputation or other characteristic that is due to that place of origin.



What does it seek to protect?

- Reputation
- Uniqueness
- Prevents misuse by others



Traditional system of protection

- Limited number of practitioners
- Limited awareness among masses
- **Obscurity**



Communication revolution

- Reshaped communication at the global level =>
 - Increased scope of trade
 - Increased potential of patronage by mass
 - Radical change in aspirations and lifestyle



Implications of GI in flat world

- Protection granted by obscurantism removed
- Disclosure of Information on
 - composition of artistic revelation
 - the unique technique of production



Is that a problem?

- Does not communicate the values, beliefs and customary practices of the community, which grant it the unique identity that is protected by the GI
- erosion of the fundamental base would be possible only through an invasion and subversion of the beliefs and teachings of the community, which does not appear possible through superficial market access.



GI as a Marketing tool

Flat world - information is available instantaneously

+

Automation - production on large scale for wider circulation



Loss of possible market share

⇒ *Not* in nature of knowledge and values contained therein



The need of the hour....

- *do we think it really is a loss?*
- devise ways to reduce the market loss
- Do traditional communities have the means & capacities to launch the product on global level?
- Increase accessibility of producer (community) direct to market
- **Improve training of locals and business planning to attract and retain youth in their traditional occupation**
- **Improve advertising and outreach programmes for wider communication of the product.**



Piracy & Counterfeits

- Geographical Indications (GIs) have increasingly been used as a marketing tool to create an image of quality and uniqueness, and so capture premium prices for the imitated product.
- What is open to the world?
 - product
 - *not the philosophy*
- Erosion of philosophy – *alarming*



Devil's advocate

- Uniqueness in culture and its manifestation – an asset to the world
- access should be open
- exploitation for wider delivery to the world leads to greater interest
- enlarge the market
- *may* increase interest in the origin



Are we ready???



Preparedness

Cultivate GIs with a modern outlook

- Use of communication system to organise every sector of production to ensure proper interaction of all the stake-holders for proper benefit sharing
- A rapid increase in production requires more number of persons skilled in the art form.
- There is an urgent need to reverse the current exodus from traditional skills by providing adequate incentives to continue to those traditionally associated with the art, as well as to attract newer talent (through adequate training and skill generation) by ensuring that it is a remunerative enterprise.



Onslaught & Survival

- electronic telecommunication
- acculturation
- proliferation of standardized products of mass culture
- stifle national and local modes of cultural expression
- ensure and encourage innovations

Evolution is the key to survival



Thank you

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***PROCEDURE
FOR
REGISTRATION AND RELATED ISSUES
ON
GEOGRAPHICAL INDICATIONS***



What is a Geographical Indication (GI) ?

- A sign used on goods with a specific geographical origin possessing qualities or a reputation stemming from that place of origin.
- GI can be a word or a mark
- E.g. Basmati rice, Darjeeling tea, Alphonso mangoes, Goan Feni



Why GI Protection?

- Competition
- Right of Exclusion
- Protection of Reputation
- Protection of Collective Goodwill
- Protection of Quality



Economic Rationale for GI Protection

- An important tool to ensure quality
- Demand and Supply Dichotomy
- Premium Value: Higher prices can be commanded



GI and Consumer

- Consumer protected from spurious products: No deception
- GI is a quality assurance



GI and National Interest

- GIs are community properties unlike other IPRs.
- Matter of national pride
- Important role in rural development



TRIPS and GIs

- ✗ Protection of GI as an IPR
- ✗ Definition
Indications which identify a good as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.



Other IPRs and GIs

- ✗ Other IPRs are essentially rewards for new creations
- ✗ New Products or Expressions or Marks or Designs
- ✗ Mostly privately owned
- GIs are not created but only recognized
- Already existing products with history and reputation
- Mostly owned by a Group, Community or Authority established by Law



Appellations of Origin and GIs

- Appellations of Origin refers to **names** of a country, region or locality
- **Designates** a product
- Limited to **quality** or character of product
- Refers to geographical environment
- Geographical Indication refers to **any indication** pointing to a given country, region or locality
- **Identifies** a good
- Includes **reputation** parameters
- Broader concept



Protecting GI

- Through national legislation
- Trade Mark law (e.g. in USA)
- Certification Mark, Collective Mark, Passing Off
- Separate law for each product (e.g. in France)
- Separate Law for GI. (e.g. India)



Definition of GI

- Section 2 (1) (e) & (f)
- Items covered
- GOODS
 - Agricultural goods
 - Natural goods
 - Manufactured goods
 - Goods of handicraft
 - Industrial goods
 - Foodstuff



GI Definition

- Area covered
- Territory
 - Of a Country
 - Or Region
 - Or locality in the territory



GI Definition

- Qualifiers
- Given quality
- Reputation
- Other characteristics
- Attributable to its geographical origin



GI Definition

- Manufactured Goods
- One of the activities takes place in the territory
 - Production
 - Processing
 - Preparation



GI Definition

- Explanation clarifies that GI need not be a geographical name
- E.g. Alphonso, Basmati rice



Registration

- Provides for registration
- Of GIs, Proprietors & Authorized Users [S.6(1)]
- GI Registry set up in Chennai
- Valid for 10 years; renewable *ad nauseum* (S. 18)
- Registration *prima facie* evidence (S. 23)



Who can Register?

- Producer
 - Any association of persons or producers
 - or Any Organization/authority established under law
 - which represent the interests of the producers of the concerned goods [S.11(1)]
- Authorized User [S.17(1)]



Procedure for Registration

- Filing of application before the Registrar
- Registrar either refuses or accepts subject to conditions
- Advertisement for opposition
- 3 months time for opposition
- If no opposition, registration
- In case of opposition, copy given to applicant
- 2 months for filing counter statement



Procedure for Registration

- If no counter statement, then the application is deemed abandoned
- Copy of counter statement to the opponent
- Hearing of parties, if so desired
- Registrar may add conditions or limitations
- Registrar can rely *suo motu*, on grounds of opposition not raised by opponent



Rights

- Section 21
- Exclusive right to use the GI on the goods
- Right to obtain relief for infringement of the GI



Infringement of GI

- Section 22
- Use by any person not being an authorized user
- In such a manner which misleads as to the geographical origin of the goods
- In such a manner as to constitute an act of unfair competition including passing off



Permitted Uses

- Section 22 (4)
- Dealings in the lawfully acquired goods by the person who acquired the same
- Processing/package of such goods



Relief for Infringement

- Section 67
- Civil Action
- Injunction
- Claim for damages or accounts
- Destruction of infringing labels



Criminal Liability

- Section 38
- Falsification of a GI
- Falsely applying a GI to goods
- Selling goods to which false GIs have been applied
- Falsely representing a GI as registered



Criminal Investigation

- Cognizable
- Police officer not below the rank of DSP entitled to search and seize goods, dies, blocks, etc. [S.50(4)]
- Police Officer to obtain prior opinion of Registrar "on the facts involved" before conducting search and seizure [Proviso to S.50(4)]



Relief for Infringement

- Sections 39-44
- Imprisonment 6 months to 3 years
- Plus fine Rs 50,000 to Rs. 2 lakh
- Enhanced penalty for second or subsequent conviction
- Imprisonment – 1 year to 3 years plus fine Rs. 1 lakh to 2 lakhs.



Advantages of GI Registration

- Protects the Reputation
- Establish the Genuineness
- Prevent misuse by others
- Ensure Quality
- Better Market Returns



Thank You



NATIONAL SEMINAR ON GEOGRAPHICAL INDICATIONS

TIRUPATI LADDU a unique GI registration

PRESENTATION BY : GK MUTHUKUMAAR
ANAND AND ANAND



IMPORTANCE OF THE GI REGISTRATION

- First product in the world originating from a religious institution/ place of worship, to be granted GI protection
- Indian GI law was open to such registration
- No discrimination on the ground of religion in keeping with the Constitution
- No profit motive



NEED FOR GI PROTECTION

- Application filed to protect the applicant's interest
- To prevent counterfeit or duplicate laddus being marketed/ consumer deception
- To prevent misuse thereby defacing the sanctity attached to the product



LEGAL COMPETENCE OF APPLICANT

- The applicant is an organization established under the TTD Act of 1932
- Presently governed by the A.P. Charitable & Hindu Religious Institutions & Endowments Act 1987
- The applicant is also the user of the Geographical Indication
- Therefore the producer cum proprietor and user is the same entity



CLASS AND DESCRIPTION OF GOODS

- Class 30 – Foodstuffs made from cereals
- These laddus have a very unique taste and flavour. Are round in shape with a dull yellow colour
- Is a combination of Bengal Gram Dhal, Sugar Syrup and pure cow ghee along with adjuncts hand mixed and hand moulded
- Big laddu weighs about 700 to 720 grams, while a small laddu weighs about 170 to 180 grams



"TIRUPATI LADDU" - place of origin





UNIQUENESS - Reputation

- Based on Taste, Aroma and Sanctity
- On the basis of sale of laddus – about 1.25 lakhs laddus are produced and distributed to devotees daily
- The number of devotees visiting the temple on a normal working day is;

Off – Peak season (Feb to July)	Peak Season	Festival Season
70,000/-	80,000 to 90,000	3 Lac



UNIQUENESS - Quality

- Based upon the taste and aroma
 - Taste is very special and unique
 - Sweet taste blended with that of ghee, dhal and adjuncts in particular cardamom
 - Aroma is that of dhal fried in ghee coupled with that of adjuncts, in particular cardamom and cashewnut,
- Use of best/ first quality raw materials
- Quality testing of raw materials (nil rejection)
- Prescribed proportion of use of raw materials
- Skill of cooks at various stages of preparation



UNIQUENESS – Other Characteristics

- Sanctity attached to it due to its;
 - Preparation in the very holy and religious Sri Vari Temple
 - Offering the laddus first as **naivedya** to the Lord before distribution to devotees
 - Distributing to devotees only after they have offered worship to Lord Venkateswara at the Sri Vari Temple.



FEW ISSUES CONSIDERED

- Can a GI be granted to a product originating from a religious institution?
- Can a GI registration be granted to a product having religious sanctity?
- Can religious sanctity attached to a product form part of its uniqueness?
- Whether TTD can be the sole proprietor & sole user?
- Whether the GI has been correctly named?



A PERFECT GI

- Tirupati Laddus are those laddus which are made by Tirumala Tirupati Devasthanam,
- Exclusively at the abode of Lord Venkateswara at Sri Vari Temple located in Tirumala Hills, in the State of Andhra Pradesh, India,
- Having a very special and unique taste, aroma, colour & religious sanctity,
- offered to the Lord as naivedya and then distributed to the devotees after they offer worship to the Lord



Thank you

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National Seminar on Geographical Indications

Geographical Indications as a Tool for economic development: *Are the Stated Opportunities Real?*

Kasturi Das

25 September 2009



What do we mean by economic development and at what level here?

- National level?
- Community level?
 - Rural development?
- To my mind, it is community-level development, in general, and rural development, in particular, that is more relevant in the context of GIs.



Key Issues

- There are three key issues here:
 - Size of the cake;
 - Its distribution; and
 - Inter-linkages between the two.
- The question then is what roles can GI as a tool play in each of these respects?
 - Can legal protection as GI lead to increased sales of a product?
 - If yes, then how are the benefits derived from GI protection getting distributed among different strata of the supply chain?
 - What is the relationship between the size of the cake and its equitable distribution?



Size of the Cake and GIs

- GI does have the potential to contribute to an increase in the size of cake in the following ways:
 - Better price; or
 - Increased market size, either through creation of new markets or through regaining of market share hitherto lost to imitations; or
 - Both of the aforesaid.
- However, the realization of that potential is fraught with significant challenges post-registration in India:
 - Foreign registration (if export markets are to be captured)
 - Enforcement (nationally and internationally)
 - Brand-building, Promotion and Marketing
 - Standardization and quality control.



Distribution of the Cake: The Key Issue for Development

- If we assume that GI protection and effective management leads to an increase in the size of the cake, the question then is how are the benefits getting distributed among different strata of the supply chain?
- It is extremely important to ensure that actual artisans or producers get a fair share of the benefits.
- This is where GIs have the most significant role to play.
- However, there is no guarantee that the benefits that may accrue from the GI status would be shared equitably among various tiers in the supply chain of the product concerned.



Distribution of the Cake *contd...*

- Because it is generally observed that different tiers in a supply chain and the actors involved therewith are differentially endowed with economic and bargaining power and that actual producers and artisans, generally belonging to the bottom most stratum, are usually the most vulnerable ones with very little bargaining strength.
- Hence, one cannot rule out the possibility of more powerful actors in the supply chain appropriating a disproportionate share of the benefits and in the process nullifying, to a large extent, the development potential of GIs.
- So, there are complex distributional issues that need to be addressed here.



Distribution of the Cake *contd...*

- Now, as products using GIs pre-exist their registration and protection, the process of registration often entails reorganization of the supply chains.
- This reorganization is likely to have significant implications on distributional aspects.
- An important question here is how the demarcation of the geographical region pertaining to a GI is carried out.
- There is another aspect of the exclusion implied by GI registration: producers of imitation would no longer be allowed 'legally' to use the GI.
 - Development implications?



The Case of Handlooms and Handicrafts

- Given the multi-faceted problems confronting the sector in India, it is quite unlikely that GI registration alone would be able to make a significant dent in the livelihood of the artisans, especially in view of the significant post-registration challenges.
- However, in my view, when GI registration and its management is conceived as a component of a multi-pronged strategic intervention aimed at an overall development of a handloom or handicraft cluster, GI may turn out to be a useful tool in contributing towards the revival of this crisis-ridden segment of the Indian economy.



Co-benefits and Spillovers

- India can also explore innovative ways of generating co-benefits by coupling GI protection with other rural development strategies and programmes.
- India is yet to strategise towards exploiting such potential cross-linkages.
- There is an urgent need to improve the inter-departmental linkages and coordination to avoid duplication of efforts and optimize returns. Such a coordinated approach could immensely facilitate the process of exploiting the commercial and socioeconomic potential of GIs in India and simultaneously help in securing various spillover benefits from this collective IPR.



Finally...

- The 'Stated Opportunities' could be real, provided you have appropriate mechanism in place to grab them.

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National Seminar on Geographical Indications

Dr. V.K. Unni
Assistant Professor
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25th September 2009



Does India Need More Aggressive Policy

- India definitely will have to follow a more aggressive policy on the protections of GIs

Do we have any model to follow ?

- Looking at the EU model it can be seen that the EU realizes the tremendous economic value in GIs, much like the rest of the world has with trademarks.
- The increased GI protection that EU advocates, however, comes at the disadvantage of other countries, like the United States.
- This presentation seeks to explain why the European perspective on strong GI protection is a resourceful way for us to benefit both economically and socially from IP

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Indications



Does India Need More Aggressive Policy....

- To be simple the use of GIs is a way in which Europe can balance a unified trade alliance while safeguarding its distinct national identities.
- While comparing with the United States, the EU is a collection of individual countries with differing cultures.
- Although these countries have formed an alliance with one another via the EU to preserve international power, the Communities also wish to maintain the distinctness of each nation.
- The use of GIs is an ingenious technique to both protect these separate local industries and reap financial gains
- This has lot of similarity with India's *unity in diversity* concept
- The European Communities realize that GIs have the same strategic economic effects that trademarks offer, but for a defined region rather than a single business.

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Indications



Does India Need More Aggressive Policy....

- This is particularly the case for products, such as wine and cheese
- When the world thinks of wine and cheese, it is not Canada or India that immediately comes to mind, it is France, Italy, and many other European countries
- Europe is largely known for its fashionable, elitist products - its distinct French, German, or Swiss delicacies
- Aware of the probability of product name dilution and loss of valuable regional markets, the EU implemented legislation to protect GIs within the Communities.
- As part of the EU, the European Commission imposes binding regulations that are applicable to all Member Countries.

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Does India Need More Aggressive Policy....

- In 1992, the EU adopted the Council Regulation 2081/92 which established "designation of origin" (PDO) for specific agricultural products.
- The Regulation protects GIs as a separate form of IP from trademarks
- It creates a registry within the EU, providing GI protection for those agricultural products that comply with specific, but non-exhaustive, requirements
- These requirements include, "evidence that a product originates from a particular area, the original or local methods of producing the product, and details of the link between the product and the geographic region.
- If a PDO is approved and registered by the Commission, the regulation protects the PDO from commercial use of the registered name by others within the EU

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Indications



Does India Need More Aggressive Policy....

- Therefore, while TRIPs provides a higher form of international GI protection through a registry for wine and spirits, the EU extends this higher protection to agricultural products.

The US Model

- Contrary to the EU, the United States advocates reduced international protection for GIs.
- Because the United States has its own unique position within the international community, it is logical that it would maintain this perspective.
- First, while the United States is culturally diverse, it is a single country and one international power.

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Indications



Does India Need More Aggressive Policy...

- Therefore, unlike the EU, the United States does not need to utilize IP to maintain the distinctness of particular regions
- Instead the United States uses IP, like trademarks, to support its business-centric perspective
- Second, because the United States is a former colony of the UK, inheriting European terminology, it has been using many European GIs as generic terms for decades
- Being forced to retract these generic names would be not only logistically difficult, but also expensive
- The United States protects GIs through trademark law, by judicial enforcement of unfair competition laws, and by administrative regulation of alcoholic beverage labeling and advertising

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Does India Need More Aggressive Policy....

- The U.S. implementation of Articles 22 through 24 of TRIPs falls under the domain of the Bureau of Alcohol, Tobacco, and Firearms (ATF) labeling laws and the U.S. Patent and Trademark Office's (PTO) administration of the Lanham Trademark Act of 1946.
- If GIs and trademarks come into conflict internationally, the U.S. Trademark Association publicly takes the position of a "first in time, first in right" priority system, much like traditional trademark law.
- The ATF regulates wine and spirits, providing three tiers of protection for what it refers to as "geographic significance"
- The three tiers of protection depend on whether the alcohol is classified as "generic," "semi-generic," or "non-generic."

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Does India Need More Aggressive Policy....

- Generic terms do not receive protection.
- Semi-generic terms can be used by producers outside the producing region if "the packaging also discloses the good's true origin, and so long as the newcomer comports with the corresponding "standard of identity"
- Finally, non-generic terms can only be used to indicate wines "of the origin indicated by such name"
- Thus while making a comparison it can be noted that the European perspective for robust GI protection is both a creative and justifiable way of utilizing IP to India's economic advantage.
- EU has shown that the use of IP on the regional level, via GIs, is a way in which to generate tremendous national economic wealth and social value

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Does India Need More Aggressive Policy....

- The EU has a unique position within the international community.
- It is not one single nation, but an alliance of over twenty nations for trade and economic purposes
- By granting GI protection to wine, spirits and agricultural products, the EU is able to encourage product recognition for its regional communities.
- This can strengthen, the economic growth of these regional communities
- To be sure the EU model provides the best alternative for India to move ahead

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Thank you

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TRADITIONAL KNOWLEDGE AND GEOGRAPHICAL INDICATIONS

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TK and GI

- GI is quite insufficient to protect TK
 - GI only protects indication, which is a name or figurative representation or a combination of the two [Ss. 2(g), 21 and 22]
 - Does not protect TK against misappropriation
 - The main thrust of GI is not to protect TK
- But it is capable of protecting TK to some extent
- Protection of GI could be a first step towards protecting TK as an independent form of IP
- Indian Law itself has some limitations and lacunae

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Main thrust of GI - not to protect TK

- Evident from the definition of TK
 - Goods which are identified by the indication could be agricultural, natural or manufactured goods – in other words – human intervention is not essential
 - The quality, reputation or other characteristics of the goods is not attributable to human factors but to the geographical origin

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GI only protects Name

- Indication – Name, Geographical or figurative representation or combinations of them
- As evident from S. 21 the rights conferred on authorized user are the exclusive right to use the indication in relations to goods and the right to obtain relief on infringement.
- In short the traditional knowledge is not protected against misappropriation

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Significance of protection of name

- In some cases protection of Name has great significance e.g. Kanchipuram, pochampally sarees – even if the same quality saree is sold in another name it may not have market – name matters
- Protection against usage of 'like', 'type' etc may strengthen the GI – as under Indian law it is not limited to spirit and wines
- But even in such cases if the technology and design is misappropriated, there is a chance of the original one's slowly withering away

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Significance of protection of name

- In some other cases of TK, name does not matter – it is the technology or information that matters – e.g., Genetic Resources related TK generally
- In such cases it is not the name that matters but the knowledge/information traditionally handed over to communities and cherished and nourished by them
- If such knowledge is misappropriated and without consent and privatized using other forms of IP without sharing ownership or other benefits, it could not be prevented by GI law. For that a *sui generis* law recognizing TK as an independent form of IP is required

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Positive aspects of GI

- For the first time collective property right (in contrast to individual property right) was recognized as a form of IP
- The exclusive right to use the indication vests with a community or a group rather than on individuals
- Thus GI protection facilitates recognition of TK as a form of IP – could be termed a forerunner
- It also dismantles the stand that collectively owned knowledge could not be subject matter of IP

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Special Features of GI congenial for TK protection

- In contrast with other IPRs, GIs are considered relatively more amenable to customary practices of indigenous communities
 - Link with geographical area
 - Nature of keeping knowledge under collective ownership rather than privatizing it
 - non-transmissibility – limited ownership
 - Perpetuity of protection
 - Decentralized, not concentrated rights
 - The scope of this protection is consistent with cultural and traditional rights



Scope for TK protection under Indian GI Law

- Indian definition
 - an indication which identifies such goods as agricultural/natural/ manufactured goods originating, or manufactured in the territory of country, or a region or locality in that territory
 - where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin
 - and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality

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Scope for TK protection under Indian GI Law

- “goods” is defined in S. 2 (f) to mean agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff
- GI can relate to both natural and manufactured goods
- It can also represent handicraft or industrially produced goods
- It is enough if the quality, reputation or other characteristics is essentially attributable to geographical origin – enough if reputation alone is so traceable – not necessary that quality or other characteristics are so traceable
- These provisions are indicative of the fact that the Indian GI law is capable of protecting TK to some minimal extent

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GI - Strategic Importance

- GI has great potential in the rural and agricultural development of a nation
- It is an effective tool having potential to support rural and agricultural communities against the onslaught of industrialization and globalization which could ensure sustainable rural development
- When the surplus produced as a result of green revolution or biotech revolution makes it uneconomical for the small and medium sized farmers to continue in their occupation GIs are identified by agriculture based economies as a solution to this problem



GI - Strategic Importance

- GIs serve as a means of changing quantity based production system to quality based one through product differentiation
- GI, using its link with a geographical region, tries to counter the modern trends of delocalization and homogenization of production
- In short, GI engages local resources, both natural and human, in a collective process involving all local actors, thereby activating all components of the rural economy leading to sustainable development



GI – Socio-economic Implications

- GI goods focus on niche markets rather than commodity markets
- GI enables such goods to make use of the opportunities provided by global market place and the modern marketing techniques to enhance sustainable rural development
- GI enables the traditional, rural based technology to meet the challenges posed by modern technology



GI – Socio-economic Implications

- In the modern hi-tech world, where marketing techniques alone sells goods, GI supports both socially and economically the traditional skills, culture and farming techniques using the same marketing techniques
- The quality of GI which ensures diversity of products helps to protect biodiversity and defend homogenization put forth by green revolution and biotech revolution using quality oriented diversification
- Instead of quantitative growth, focus diverted to quality and product diversification



Protection under GI

- Protects the GI against misleading as to geographical origin or against acts constituting unfair competition
- In the case of goods notified by Central Govt. for providing additional protection, uses expressions such as 'kind', 'style', 'imitation' or the like, infringes the GI –dilution like protection – no need to prove misleading



Rights under Indian Law

- Registered proprietors get the right to challenge infringements
- Authorized users get both the right to use the GI and to challenge infringement
- Both classes of persons do not get the right to assign the GI as what is protected under GI is the collective property rights of all producers



Problems with Indian Law

- Two types of registrations are required
 - Registration of GI under Part A
 - Any association of persons, or producers or any organization or authority representing the interests of the producers could register a GI
 - Statement as to the link between goods & geographical region in respect of a specific quality, reputation etc., which are essentially or exclusively due to geographical environment with its inherent natural or human factors
 - details as to production, processing or preparation which takes place in the geographical region
 - Class of goods to which GI applies
 - Geographical map in which the goods originate
 - Particulars regarding the appearance of GI



Problems with Indian Law

- Statement containing particulars of producers proposed to be initially registered with the registration of GI
- Particulars of mechanism to ensure standards, quality, integrity, consistency in respect of goods to be shown
- Registration of authorized users under Part B
 - Any person claiming to be the producer of GI goods may apply [S.17]
 - Application to be jointly made by regd. Proprietor and proposed authorized user
 - A copy of letter of consent from regd. Proprietor may accompany the application
 - Where a consent letter is not so furnished, a copy of the application must be endorsed to the registered proprietor for information



Problems with Indian Law

- Permission given to bodies other than those of the producers to register GI and thereby become registered proprietors allows chances for misuse
- They may register GIs which may have potential for commercial exploitation and by limiting the geographical area and identifying producers in whom they have interest and who may not be real producers, misuse the law
- As India does not have the culture of maintaining GI with vigil, the real producers may be sidelined by such proprietors – they may not even know about such abuse



Problems with Indian Law

- Though many GIs are registered in India, there is no registration of authorized users in all cases
- People are under the impression that GI registration confers patent-like protection and simple registration alone is sufficient to safeguard their interests
- So no rural producer is bothered to challenge infringement of GI; nor are they interested in getting themselves registered as authorized users
- Definition of 'producer' includes persons who trade in or deal in production, exploitation, making or manufacturing of GI goods
- This definition gives an upper hand to traders and middlemen and actual producers gets marginalized



Problems with Indian Law

- Increasing trend of food and other manufacturing companies to use regional names to distinguish their products. Unless care is taken this trend may demolish the basic edifice of GI protection. Eg. Jamnagar petrol and other petroleum products by Reliance Industries
- In the case of European regulation of 2006 only groups could register GIs. Individuals and natural persons could register GIs only on proof of two things (a) that the person concerned is the only producer in the defined geographical area willing to submit the application and (b) that the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product differ from those produced in neighbouring areas
- the danger exists that large farmers and agribusiness firms could capture the benefits that result from the geographical indication, without any benefits flowing to smaller, rural actors who are often the original custodians of the local resource.



Potential challenges

- India has to develop a culture of protecting and maintaining GIs
- Niche marketing through origin labelling may require an extensive awareness campaign in order to capture the benefits associated with differentiation.
- Extensive awareness creation about the nature of the rights and the ways to defend and protect the rights are required
- Use of appropriate marketing techniques must be employed in order to attract the attention of potential consumers
- Methods like certification marks could be used in addition to GI, if it helps to make consumers aware of the value of the GI products



Potential Challenges

- Attempts should be made to develop techniques to ensure that the benefit of GI protection goes directly to the producers avoiding traders and middlemen
- A study conducted by CUSAT Centre for IPR Studies reveals that often it is the traders who are benefited out of GIs and the real producers are not getting any economic benefits resulting in their opting out of continuing with production of GI goods
- Especially in handicrafts and textile fields like the kancheepuram and pochampilly saree weavers are not getting enough remuneration to sustain them in their respective fields
- This will drive away the next generation from pursuing this mode of living



Suggestions

- Law has to be amended necessitating the registration of GI by actual producers instead of other associations, organisations or authorities – only single registration is then required
- These bodies should only undertake the duty of facilitating registration by the genuine GI producers and promote marketing – this may avoid intervention by intermediaries, thereby enabling the benefits arising out of GI registration to reach the real producers
- The govt. and other non-profit organizations should take up the job of GI promotion using the modern marketing techniques and train the producers in managing GI
- Using of any quality related sign, product guarantee or certificates could be used as effective marketing tools to enable the product to find its niche market



Suggestions

- For protecting TK a sui generis law recognizing it as an independent form of IP should be enacted with highly decentralized powers and funds

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Thank you

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National Seminar on Geographical Indications
**TRADITIONAL KNOWLEDGE &
 GEOGRAPHICAL INDICATIONS: MEETING
 POINTS & CONFLICTS**

LATHA R NAIR
 Partner, K&S Partners, Gurgaon
 25 September 2009



Contents

- Definitions
- Common ground
- Conflicts
- GIs – a tool for protection of TK



Definitions

- Traditional Knowledge (TK) can be classified as the knowledge possessed by a traditional or indigenous community or even a group of persons whose life and livelihood depend on such knowledge.
- Eg., the wound healing properties of turmeric known to Indians for centuries and the Aranmula mirror produced from a combination of metals using a traditional process



Definitions

- Geographical indications (GI), are designations that indicate goods originating in a specific region to be possessing a certain characteristics, qualities or reputation which are essentially attributable to the geography of the region.
- E.g., Darjeeling tea, Pashmina wool



Common ground

- What is common to TK & GI?
 - Both are held by communities
 - Both are born out of cultural practices
 - Both are economic tools for the members of the community
 - Both need to be protected from usurpers so that the economic interests of the members of the community are protected



Common ground

- Most GI products are produced sans industrialization
- Inextricably linked to cultural practices, all GI products have some amount of TK locked in there as part of the method of production.
 - E.g., Use of fresh cow's milk and cocoa butter in Swiss Chocolate



Common ground

- Sowing of Basmati seeds during a particular time of year to enable the plant to obtain shorter days to flower.
- Exposing the coffee to humidity and moisture of the monsoons to acquire the desired flavour in Monsooned Malabar coffee
- Hence while all GIs are TK, all TK can't be GIs.



Conflicts

- So what sets apart GIs and TK?
 - While the characteristics, qualities or reputation of a GI have to essentially have a link with the concerned region, a TK is not necessarily linked to geography of the region.
- To illustrate:
 - Ayurveda is part of the TK India possesses. While Kerala is famous for Ayurvedic medicines and medical practices, Ayurveda in Kerala style is practised world over with the same results !



Conflicts

- The wound healing properties of turmeric have been practised by Indians for centuries, yet turmeric cannot be classified as GI from India because irrespective of the region, turmeric continues to possess the same wound healing properties!

GIs a tool for protection of TK

- There is no specific law in India today for protection of TK
- One of the biggest achievements that has come in aid of the protection of TK in India today is the TKDL
- Considering that GIs comprise TK, one of the unwitting legal tools for protection of certain TK can be the GI law.

Thank you for your attention!

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Impact of GI Registration on Producers' Returns and Consumers' Willingness to Pay: Empirical Estimation

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24th September 2009

Some of the expected benefits of Geographical Indication are:

- ❑ It prevents unauthorized use of a registered Geographical Indication by others
- ❑ It increases the visibility of the product and indirectly can boost exports and domestic sales.
- ❑ It may have the potential to promote economic prosperity of producers of goods produced in a geographical region.

GI may infer Economic Benefits: Theory and Literature

- GI leads to Product Differentiation and thereby create "rent." (Moran 1993)
- Alternatively product specification required by the GI registration process may lead to "self-exclusion" by small producers due to inability to access certification. (Rangnekar 2004)
- Further some studies point out that producer collusion may be needed to signal quality to consumers so that they are willing to pay more (Marette et al 1999, Marette and Crespt 2003))

UNCTAD-India Survey

- All regions covered
- Total number of households surveyed- 2,778 and total number of respondents- 13, 422.
- Three sets of respondents- producer households, consumers and traders
- Survey was undertaken by –GENESIS and NAARM

Objectives

- The results of the survey have been used to estimate the impact of GI registration on :
 - ❖ Producers' per capita income and standard of living index, which has been estimated.
 - ❖ Consumers' Willingness to Pay for GI products
 - ❖ Producers and Traders expected increase in Selling price and Cost price

Distribution of households by main means of livelihood

Livelihood	Respondents – No		
	Agriculture Products	Non-Agriculture Products	All
Agriculture	1229 (87%)	120	1351
Non-agri enterprise	23	914(67%)	937
Wage/salary income	143	321	464
Others	19	9	28
Total	1414	1364	2778

Percentage distribution by Social-groups of producer households by product-Groups

Social group	Respondents – %		
	Agriculture Products	Non-Agriculture Products	All
SC	10.3	23.9	16.9
ST	28.6	15.5	22.2
OBC	26.1	16.6	21.4
Others	35.0	44.0	39.4
Total	100.0	100.0	100.0

TOTAL CONSUMER AND TRADERS/PRODUCERS ANALYSIS

Type	Freq.	Percent
Consumers	440	48.78
Local Shop Keepers	261	28.94
Sellers Special Environ	21	2.33
Wholesaler	74	8.2
Showrooms	30	3.33
Others	76	8.43
Total	902	100

GI Registered Product in Survey

Products in list	State	Time Since Registration in Months	Time Taken for Registration in Months
Channapatana Toys and Dolls	Karnataka	17	11
Coorg Orange	Karnataka	17	10
Kancheपुरam Silk	Tamilnadu	24	8
Khullu Shawl	Himachal Pradesh	25	5
Mysore sandal Soap	Karnataka	17	10
Orissa Ikat	Orissa	12	16
Sri Kalahasthi kalamkari	Andhra Pradesh	17	10
Avearge		18	10
Madhubani Paintings	Bihar	1	23
Muga Silk of Assam	Assam	1	23

Methodology: Impact on Per capita income and Standard of Living Index of Households

- I. **Parametric Approach** -We apply t-test to test equality of means of incomes and indicators of well-being between GI households and Non-GI households.
- II. **Non Parametric Approach** - We employ two test statistics, Kolmogorov-Smirnov test for equality of distribution between two sample and Two-sample Wilcoxon rank-sum (Mann-Whitney) test for ascertaining the equality of similar income and expenditure of GI households and Non-GI households.
- III. **Regression Analysis** – To estimate the impact of GI registration on per capita income and standard of living of households

Results of Parametric Approach

t-tests

- The wage salary earned by GI –registered product associated households is higher than those of non-GI households.
- The number of skilled members in GI associated households is higher than those of non-GI products.

Broad Results: Wilcoxon-Mann_Whitney

- The per-capita income of non-GI-associated households is less than per capita income of GI-associated households in agriculture sector.
- The per-capita income of non-GI-associated households is less than per capita income of GI-associated households in non- agriculture sector.

Impact of GI: Regression Analysis

- Household per capita income/standard of living index is the dependent variable
- Explanatory variables-
 - ❑ Number and level of educated person which proxies for the skill level
 - ❑ household size
 - ❑ asset base of the household
 - ❑ GI status
 - ❑ Time period, we test whether overtime the impact of GI registration reduces or remains the same.

Empirical Results: Impact of GI on Household Incomes

- GI status dummy is consistently positive and highly significant showing that GI households perform better in terms of earning a higher income than Non-GI households.
- GI status will have a positive impact on household earning but overtime its the rate of change may be reduced.
- This indicates that GI status needs some collateral facilities to improve in time so as to maximize the gain from GI status.

Example from Textile Committee Report

	Price in 2004	Price in 2005	Price in 2006	% change 2005 to 2004	% change 2006 to 2005
Silk Saree	240.32	254.88	269.44	6.05	5.71
Silk LDM	175.51	182.65	189.79	4.06	3.90
Cotton Saree	92.59	97.33	102.07	5.11	4.87
Cotton LDM	26.39	28.9	31.41	9.51	8.68

Standard of Living Index

- Standard of living index is an attempt to combine a number of well being indicators into single indicator, which reveals to us the relative position of different households in a comparable scale.
- It is constructed using Principal component analysis

Empirical Results: Impact of GI on Standard of Living Index

- Direction of the results is similar to per capita income results, but the impact of GI registration on standard of living is higher and statistically more significant.
- Size of the household has a negative impact while assets owned by the households has a positive impact.
- Impact within a year is higher than overtime. Visibility rises but there is need for brand building

Price Expectations

- If the consumers are ready to pay, then how much percent over the prevailing price are they prepared to pay?
- Further, it quantifies the range of percentage increase over the prevailing cost price which will be expected by traders and producers, based on their opinion.

Evidence of Price Premium

- Landon and Smith (1999)- certain regional designations for 'Bordeaux' wines command a large price premium – as much as US \$15 per bottle.
- Bombrun and Sumner, (2003)- wines with a 'Napa Valley' designation were priced 61 percent higher than wines with a 'California' designation
- Loureiro and McCluskey, (2000)-products bearing the 'Galician Veal' label commanded a premium of US\$ 0.21 per kilogramme.
- A consumer survey undertaken in the EU in 1999 found that 40 percent of consumers would pay a 10 percent premium for origin-guaranteed products (WTO 2004).

Methodology: Consumer Analysis

- Based on the Contingent Valuation Method, the Model (1) tries to capture a simple yes/no answer on whether a respondent is willing to pay more for GI registered product or not.
- In the second model, the study extends the analysis to the likelihood of paying the following four classes: i) they are not willing to pay ii) 0-5% iii) 5-10% iv) 10% and above,
- The study adapted the multinomial Logit model.

Methodology: Producers Analysis

- In Model (1), the dependent variable is 'whether registered GI product provides enhanced premium price to the producers and traders or not' where the respondents are producers and traders.
- Further, if the respondent says yes, then the study is extended to models two and three to understand the category of the likelihood of expected prevailing cost price and expected prevailing selling price

Models

- In Model (2), the dependent variable (expected increase in cost price by producers) can be classified into three categories namely i) there is no percentage increase over the prevailing cost price ii) 0-10% increase iii) 10 and above, here the study adopts the multinomial Logit model.
- In Model (3) the dependent variable (expected increase in selling price by traders) can be classified into three categories namely i) there is no percentage increase over the expected selling price ii) 0-10% increases iii) 10 and above,
- The study estimates the multinomial Logit model.

Consumer Analysis :Results of the Probit Model

- The results show that GI registration of the product has a positive impact on WTP.
- Other variables, namely (i) literacy, (ii) awareness of the GI Registration Act, and (iii), product quality also have an impact on WTP.
- After dropping the literacy variable from the model, the regional effects are found to play a major role in their willingness to pay for the GI registered product.

Results for Agricultural products

✿ If people are aware of the GI Registration Act, especially in case of agricultural products, the respondents are ready to pay more than 10 per cent over the prevailing price for the GI registered product at a 1% significant level.

Results for Non-agricultural products

✿ In case of the non-agricultural product, if they are aware of the GI Registration Act, then the respondents are willing to pay only about 0-5 per cent over the prevailing price for the GI registered product at a 1% significant level.

Traders/Producers Analysis

Results of Multi-nominal Logit Model

- For agricultural product the expectation of rise in selling price by producers is above 10% while the traders expect a rise of 0-10% in their cost price.
- Similar results hold for non-agricultural products but the competition faced by the product plays an important role in the expected rise in prices.
- If the competition is higher, the expected cost price and selling price is lower.

Broad Conclusions

- I. GI registration does lead to increase in household per-capita income.
- II. The standard of living of the producers increase.
- III. This occurs as the consumers are willing to pay more for GI products
- IV. In case of agricultural products the rise in prices for the producers can be 10-15% while in case of non-agricultural products it can be 5-10%.

Main Limitations of the Analysis

- Very few products with GI registration for more than 12 months in the survey
- Limited number of agricultural products

Experience of Kota Doria

- Survey of weavers of Kota Doria shows that incomes of the weavers has tripled after GI registration
- **Master weavers are now able to dictate and negotiate wages and sale price respectively and are thus able to make more profit.**
- Training camps, Design Workshops, Fashion Shows, Exposure visits, Interaction with well known designers, organized by RUDA during 2005-07 resulted in increased turnover and use of Kota Doria

- Positive Social Impact is visible in terms of
 - improved standard of living,
 - affordability of weavers to educate their children in better schools and colleges
 - The girls of weaver families have better Matrimonial Prospects.

- State Govt. undertook a targeted brand-building campaign. GI, in conjunction with appropriate sales strategy, resulted in positive impacts

Policy Implications I

- To increase the national and international visibility of the product, GI registration can be an important tool.
- The benefits go to the producers in terms of higher prices, which improves their standard of living.
- However, GI registration is not sufficient as it is important for consumers to feel confident about the standardisation of the quality of the GI products.

Policy Implications II

- The results show that overtime the rate of growth of price premium through GI registration may decline.
- Brand building and constant improvement in quality is required to maintain higher price premium.
- Need for suitable mechanisms for enforcement

Thank You

Geographical Indications as a Tool for Economic Development: *Are the Stated Opportunities Real?*

Kasturi Das

25 September 2009

What do we Mean by Economic Development and at What Level Here?

- **National level?**
- **Community level?**
 - **Rural development?**
- **To my mind, it is community-level development, in general, and rural development, in particular, that is more relevant in the context of GIs.**

Key Issues

- There are three key issues here:
 - Size of the cake;
 - Its distribution; and
 - Relationship between the two.
- The question then is what roles can GI as a tool play in each of these respects?
 - Can legal protection as GI lead to increased sales of a product?
 - If yes, then how are the benefits derived from GI protection getting distributed among different strata of the supply chain?
 - What is the relationship between the size of the cake and its equitable distribution?

Size of the Cake and GIs

- GI does have the potential to contribute to an increase in the size of cake in the following ways:
 - Better price; or
 - Increased market size (either through creation of new markets or through regaining of market share hitherto lost to imitations); or
 - Both of the aforesaid.
- However, the realization of that potential is fraught with significant challenges post-registration in India:
 - Foreign registration (if export markets are to be captured)
 - Enforcement (nationally and internationally)
 - Brand-building, Promotion and Marketing
 - Standardization and quality control.

Distribution of the Cake: The Key Issue for Development

- If we assume that GI protection and effective management leads to an increase in the size of the cake, the question then is how are the benefits getting distributed among different strata of the supply chain?
- It is extremely important to ensure that actual artisans or producers get a fair share of the benefits.
- This is where GIs have the most significant role to play.
- However, there is no guarantee that the benefits that may accrue from the GI status would be shared equitably among various tiers in the supply chain of the product concerned.

Distribution of the Cake *contd...*

- Because it is generally observed that different tiers in a supply chain and the actors involved therewith are differentially endowed with economic and bargaining power and that actual producers and artisans, generally belonging to the bottom most stratum, are usually the most vulnerable ones with very little bargaining strength.
- Hence, one cannot rule out the possibility of more powerful actors in the supply chain appropriating a disproportionate share of the benefits and in the process nullifying, to a large extent, the development potential of GIs.
- **So, there are complex distributional issues that need to be addressed here.**

Relationship between Size and Distribution

- It may be too simplistic to attribute these complex distributional issues to poor sales turnover of a product prior to protection as a GI.
- The problems are much more deep-seated, as may be exemplified by the handloom sector.
- Hence, increase in the size of the cake may neither be necessary nor sufficient by itself to address the distributional issues.

Issues Related to Registration...

- It needs to be noted that as GI products pre-exist their registration and protection, the process of registration often entails reorganization of the supply chains.
- This reorganization is likely to have significant implications on distributional aspects.
- An important question here is how the demarcation of the geographical region pertaining to a GI is carried out.
- There is another aspect of the exclusion implied by GI registration: producers of imitation would no longer be allowed 'legally' to use the GI.
 - Development implications?

Handlooms and Handicrafts: Need for a Holistic Approach

- Given the multi-faceted problems confronting this sector in India, it is quite unlikely that GI registration alone would be able to make a significant dent in the livelihood of the artisans, especially in view of the significant post-registration challenges.
- However, in my view, when GI registration and its management is conceived as a component of a multi-pronged strategic intervention aimed at an overall development of a handloom or handicraft cluster, GI may turn out to be a useful tool in contributing towards the revival of this crisis-ridden segment of the Indian economy.

Co-benefits and Spillovers

- India can also explore innovative ways of generating co-benefits by coupling GI protection with other rural development strategies and programmes.
- The country is yet to strategize towards exploiting such potential cross-linkages.
- There is an urgent need to improve the inter-departmental linkages and coordination to avoid duplication of efforts and optimize returns.
- Such a coordinated approach could immensely facilitate the process of exploiting the commercial and socioeconomic potential of GIs in India and simultaneously help in securing various spillover benefits from this collective IP.

Finally...

- The 'Stated Opportunities' could be real...
 - provided you have appropriate mechanism in place to grab them.
- Need of the hour...
 - A well-planned and holistic strategy for medium to long run.

Thank You...

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