

## **THE JOURNEY OF GEOGRAPHICAL INDICATIONS IN INDIA: LESSONS FROM RAJASTHAN**

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The Journal of Intellectual Property Studies ('JIPS') started its journey in 2016 with the goal of disseminating information on contemporary intellectual property rights issues. Intellectual property is a dynamic subject; and this journal tries to reflect the changes happening worldwide. In furtherance of this objective, JIPS, along with National Law University Jodhpur's ('NLU Jodhpur') Department of Industrial Policy and Promotion-Intellectual Property Rights Chair has been exploring the practical grass-root level experiences of holders of geographical indication ('GI') in Rajasthan.

GI was given statutory protection in India after the Agreement on Trade Related Aspects of Intellectual Property Rights, 1994 ('TRIPS') came into force, through the Geographical Indications of Goods (Registration and Protection) Act, 1999 ('the Act'). Darjeeling tea, which was the first GI granted in India, was earlier protected under a certification mark. After the implementation of TRIPS, *sui generis* protection of GI was granted in India for three types of goods: agricultural goods, natural goods and manufactured goods. Under manufactured goods, handicrafts such as products of textiles and food items (including wine and spirits) are also included.

In India, GI protection in the case of handicrafts has also been extended to products of traditional cultural expression ('TCE'). Handicrafts (like *Thewa* art or *Molela* clay art of Rajasthan) and textile goods (like *Bagru* Print or *Sanganeri* Block Print of Rajasthan) which are products of TCE are protected under GI, as any other specific mechanism for protection of TCE is yet to be available in India. Traditional culture which has been nurtured for thousands of years by different communities is coming under the purview of GI. Hence, other emotional factors like equity justification, promotion of customary rights, conservation of culture and cultural heritage etc. come under the purview of GI protection. There is a positive impact of this approach: art and handicrafts traditionally produced by different communities of different demographic areas are now listed up.

The list of products with GI protection in India is not exhaustive. Recently, West Bengal was granted GI protection for *Rosogolla*, as the 530<sup>th</sup> GI of India; however, there is a long road

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ahead. From the jurisprudential aspect of GI, the incentive theory of intellectual property rights takes care of the GI holders; but there is still a large gray area in the post registration phase. The products covered under GI have extensive demand in national and international markets; considering the fact that a GI does not stop anyone from making or selling the same or similar products, even after the registration of GI; it only prevents the selling of the products under the same name as that of the GI. Therefore, many fake/imitation products are available in the market. The *Pochampally Ikat and Hyko Ikat* case is a good example for the same, where the use of '*GI Hyco Pochampally*' was seen to infringe '*Pochampally Ikat*'.

Another problem is the identification of the original holders of the GI. Since time immemorial India has faced invasion from outsiders, which contributed to the development of its mixed culture and heritage. The migration of workers and the consequent impact of India's TCE on foreign workers and that of foreign workers on Indian artisans has also added up with time. The effect of this intermixing of culture is evident in art and handicrafts. These art forms are nurtured in similar or different ways in many countries in a region according to the market demand. *Batik* print, for example is prevalent not only in India but also in Thailand, Malaysia, Indonesia and other south-east Asian countries. But the essence of GI is lost in the products of colourable imitation available in the market. This is due to the use of different raw materials and other factors compromising the quality. Threats are mostly internal, though external threats are also rampant.

In the Act, the A-List covers the Registered Applicants, and the B-List covers the Registered Users. In reality, this demarcation is ambiguous, causing confusion amongst all the stakeholders. Further, the significance of the Registration Certificate is not clear, leading to problems with profit/benefit sharing between GI holders and users.

NLU Jodhpur's team of researchers conducted a workshop with the artisans of Rajasthan holding registered GIs. Only eleven products of all registered GIs in India are from the State of Rajasthan, which are: *Kota Doria*, 'blue pottery' of Jaipur, *Molela* Clay work, *Kathputlis*, *Sanganeri* print, *Bikaneri Bhujia*, *Phulkari*, *Bagru* print, *Thewa* art, *Makrana* marble and *Pokaran* pottery craft. In the workshop, we analyzed the challenges faced by them. After getting GI registration, the expectation of the artisans was seen to be very high both for recognition in national and international markets, and for proper economic incentives in the post registration phase. However, hardly any of these expectations are met in reality. The mechanism of the post registration phase is not structured enough to cope with the colourable imitation; hence the

rationale of GI protection is at stake. Artisans are neither getting recognition nor economic returns; while customers face quality concerns because of their lack of awareness.

*Bikaneri Bhujia* is protected under GI. A dispute arose when *Haldiram Bhujawala* made similar *Bhujia* in Kolkata using the same ratio of raw materials and the same formula. They even transported water from Bikaner, however, the taste of this *Bhujia* was different from the original *Bikaneri Bhujia*. From this example, it is evident that climatic conditions of a particular geographical location have a huge impact on the finished product. Therefore, apart from skill and raw material, climatic conditions are an important factor attributable to the character of GI.

Despite this, fake/imitation products of GIs are rampant, as seen with *Bikaneri Bhujia* as well as *Bagru* and *Sanganeri* print. Many fake products are flooding the market due to high demand from customers. There is a lack of awareness amongst end users which prevents them from differentiating between the original and fake products. Such cheap colourable imitations also cause a revenue loss for GI holders. This shows that the statutory provisions of post-registration quality control and vigilance process are not adequate to take care of the GI holders interests.

This experience is not unique for Rajasthan GI holders, but is prevalent all over India. This shows that there is a need for improvement of the post-registration mechanism, to give optimum benefit to each and every stakeholder. There are certain artefacts which are well circulated; as some artefacts are available in almost every part of the country, it is difficult to find the specific geographic origin of those artefacts. This is the essence of the West Bengal/Orissa *Rosogolla* dispute. While in this case, West Bengal is the holder of the GI, it is possible that both the states have an equal right to the GI since linking the product with a specific geographical area is difficult. For protection of products in such cases, trademark protection under certification mark or collective mark can be thought of.

To move ahead, I suggest certain recommendations to resolve post-registration challenges. A GI portal can be created where all relevant information will be available, including the details of registered holders and users of GI. This will provide a structured base for monitoring and research. Current ambiguities relating to the A and B lists can be minimized in this way.

We should treat any product infringing GI in the same manner as counterfeit goods as provided under The Trade Marks Act, 1999. Hence, law enforcement authorities should have the

authority to support GI holders by proper vigilance and market control to stop colourable imitation. Suits and complaints regarding GI infringement are not seen as frequently as in the infringement of other intellectual property rights. There is a need of a strong initiative from GI holders and users against the fake products and there must be a forum where they can lodge their complaints. The GI holders and users may try to avoid litigation, which is a costly and time consuming affair. Hence, alternative dispute resolution mechanisms can be facilitated by such forums.

It will be extremely helpful if some mechanism can be thought of, by which end users can differentiate between original and fake products at once before buying. Start-up companies can do adequate market research and can innovate mechanisms for such differentiation. One such method can be Radio-frequency Identification Tracking or something on similar lines. Implementation and execution of these solutions might be burdensome, but must be at the earliest. The experiences of other countries can be helpful, however each country has their own unique problems. Hence, GI holders need to tackle these challenges by thinking about the situation from an Indian perspective.