

# Geographical Indication and Knowledge Capital in Evidence-Based Society

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## ABSTRACT

It is high time when the IPR has to be considered in a proactive approach and in consonance with the global development, particularly with business world. The geographical indication is not just an inventory and evidence creation, it is an intellectual capital that calls for promotion and creation of a new culture in the business world. India is very slow and ignorant about many of the aspect of IPR and related legal issues. This paper discusses some of these issues.

**Keywords:** Geographical indication, IPR, TRIPS, IP, traditional knowledge

## 1. INTRODUCTION

It is possible that the problems or opportunities in a society exists before one thinks of a solution or take advantage of it. The indications or symptoms are there to foresee the problems or advantages; often we are aware of symptoms rather than the actual problem. Albert Einstein stated that "Today's problems can not be solved with the level of thinking that created them", and Francis Bacon stated that "A man must make his opportunity as often as he finds it". In context of geographical indication (GI), it is the way one has to think in building creative, innovative and effective knowledge capital in any country. Every human being search for a solution which is available in some form or the other, but some acts immediately and some slowly. If these thoughts and actions are recorded and are put to use then they will be helpful for reuse. Also, it

is noticed that simple things works better than complicated, where use and reuse makes it a good product or practice. The visualisation of these ideas require thinking and rethinking, creating a mental picture around the idea, recording appropriately with explanation, opportunities, benefits and perspective. Sharing of these ideas with proper community of minds adds more ideas or alternatives. Many of the products, ideas, practices or services become important by chance; where refinement began with the criticism and credence which leads to analysis in a proper setting, boundaries and the focus.

In India, many comments are very common; India has very rich heritage, culture, nature and practices, but is poor in converting them into commercial or knowledge capital. India is rich, but Indian administration is poor; Indians are crazy of the word foreign and foreign goods; Internet is a rich technology,

but Indian information poor are some of the other common phrases we almost hear daily. All these provide clue and a direction as to where we are lacking. In context of the GI even the common comments have value as far as knowledge development is concerned. However, it is essential that one needs to understand GI in context of business competition.

## **2. GEOGRAPHIC INDICATION IN BUSINESS SOCIETY**

The GI as defined in Wikipedia<sup>1</sup> “is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country)”. The use of a GI may act as a certification that the product possess certain qualities or enjoys a certain reputation because of its geographical origin. Also, Wikipedia states that in many countries the protection accorded to GI by law is similar to the protection accorded to trademarks, and in particular certification marks. GI laws restrict the use of the GI for the purpose of identifying a particular type of product, unless the product or its constitute materials originate from a particular area and/or meet certain standards.

TRIPS<sup>2</sup> Part II—standards concerning the availability, scope and use of IPRs, Sections 1 and 2 , Article 22, 23, and 24—attributes to the GI. Article 22 identifies a good originating in the territory of a member, where a given quality, reputation or other characteristic of the good are essentially attributable to its geographical origin. It specifies that the members shall provide the legal means to prevent the use, by any means, in the designation or presentation of a good that originates (the true place of origin) in a manner which misleads the public as to the geographical origin of the good. It also prevents any use which constitutes an act of unfair competition, like registration of a trademark which contains or consists of a GI, with respect to goods not originating in that territory.

Article 23 in context to additional protection to GI, e.g., wines and spirits, prevents use even where the true origin of the good of GI is indicated or the GI is used in translation

or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, and ‘imitation’. It also prevents registration at the request of an interested party. In the case of homonymous GI, the Article has provisions where negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration eligible for protection in member countries and needs that each member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

Article 24, International Negotiations, Para 4, requires a member to prevent continued and similar use of a particular GI of another member in connection with goods or services by any of its nationals or domiciliary who have used that GI in a continuous manner with regard to the same or related goods or services in the territory of that member either (i) for at least 10 years preceding 15 April 1994 or (ii) in good faith preceding that date. In Para 5, where a trademark has been applied for or registered in good faith or where rights for a trademark have been acquired through use in good faith either before the date of application of these provisions as defined in Part VI or before the GI has been protected in the country of its origin, measures adopted to implement this section shall not prejudice eligibility for or the validity of the registration of a trademark or the right to use a trademark on the basis that such a trademark is identical with or similar to a GI.

The implication of GI is mainly around the factors like true origin of the goods, quality, reputation or other characteristics of the goods, good faith, not to mislead the consumers, and not as a act of unfair competition.

## **3. POPULARITY IN EVIDENCE-BASED SOCIETY**

In context of evidence-based society, Petrosin<sup>3</sup> stated that the challenges reside

not only in the dilemma faced by the policy makers but also in the quality of the evaluation evidence. Some of these problems are most effectively addressed by rigorous syntheses of the literature known as systematic reviews. The range of quality in systematic reviews and their general failure, need to be updated in light of new evidence disseminated beyond the research community.

In context of GI, there are many factors like similarities of products or practice, which originates from different places or from nature-based products. Many of the products first gain popularity or became favourite locally. Later they drew attention of the commercial competition and became familiar internationally regardless of the usage. Some of the products got developed and became popular due to the encouragement or support given by the foreign companies. These developments are becoming common due to the global access and success, sometimes even to inspire others to produce their own products based on the popularity without even acknowledging the original products or practices. Hence, it has become a compulsion or demand for each government to initiate protectionist measures at home and abroad to preserve markets and to put on record the traditional knowledge and to bring together trade, cultural, and environmental aspects.

In context of GI practice, it is becoming essential to make sure the origin of the product or practice; if it is a crop, when was it a cash crop, who planted, harvested, and processed, and their derivatives including the social and commercial relationship between the products and the plantation owners. The information about the products/practices should be comprehensive with details like quantity of the production per year; packaging for reuses, types of local process and market, export capability and demand around the world, number of small producers, development of new varieties, availability of similar products elsewhere, and anthropological view about types of consumers and consumption pattern. Many of the traditional knowledge emanated or is associated with the lower strata of people in the society until it acquired the

commercial value. Many of the products or practices were marketed as fun, till they become familiar at local level and then international level, thereby attracting the identity. Hence, there is a need to identify, document and promote traditional knowledge and GI for products and practices in India by integrating these with social functions and facilitating exports through technical consultation. The export programmes of such items, where international recognition associates with the lifestyle need to be encouraged.

However, one has to have clarity that there are many homogenous goods and processes available in various countries, which do not impose GI outside or imitation in manufacturing in other parts of the world. To tackle such factors, countries need to have sound policies and laws, and should protect their industry by imposing several regulatory measures. To achieve this, countries need to adopt and create awareness about the clarity of practice and clear definition under the TRIPS Agreement. It would be helpful if the government documents each product with its specifications and submits it to the WTO and the World Customs Organisation to obtain international protection for exports and to retain classification on tariff schedules.

The commercial competition is compelling each country too vigorously to promote consumption abroad with hope to gain greater access to niche market through these legal protections. In some of the cases, bilateral agreements or the common markets with other countries on various products and services are playing a major role.

#### **4. SUSTAINABILITY MEASURE AND CONFLICT**

The trade measures concerning goods, services, government procurement, and investment, policies of sustainable development, and other processes of integration are required to attain protection for GI. The dispute settlements are done by filing complaints through the WTO, before the Common Market Groups. Decisions are binding on both conflicting parties.

The GI needs to have proper discourse and status in the agreements with proper forum and scope, preferably multilateral for legal standing. It is also important that the countries should declare national trademarks for the largest and most important products and exports for their international protection and for successful international marketing and export campaigns, and not just for market share alone. Obstacles in the international market may concern classification—products status of the country in context of trade agreements—to increase its international recognition and earnings by highlighting uniqueness. At the same time, there are many aspects to face survival amidst global liberalisation like competition against similar products, protocol that places a quota on the import, agreement between nations, constant development and modernisation of the industry including certain tax-related issues, environmental impacts, and issues related to process and culture. Also, trade/product identification needs to be associated with proper economic data, impact of trade restrictions, and potential exporters and importers.

It would be helpful if economic and political interests; luxury of goods at the time and encouragement for production; the knowledge; experience; and technology is explored to achieve better exports control over the international market and the commodity's price. Proper documentation helps to predict the line of control or overproduction, both domestically and abroad. The country like India needs to consider about the less-efficient producers, where subsidies are being provided for encouraging production as an alternative source to achieve better export. But the productivity with quality and environment-friendly measures and use of good technology need to maintain for global competition.

## **5. PROMOTION OF RURAL/HILL PRODUCTS**

As far as the cultural aspects of GI are concerned, society is moving from evidence approach to unique aspect of GI origin and its ubiquitous presence in society. At the same time, small farmers and cultivators

are bothered about their livelihoods and are vulnerable to competition because of small size holdings, migration, land abandonment, and decrease in importance of their skills. Hence, it becomes responsibility of the government and intellectual society to develop proper documentation and research to enhance quality, productivity and marketing of rural products and hill products including varieties, techniques, extension, marketing issues, post-harvest storage, product information, differentiation and supply chain management including the specification of products, its offer and uses.

There are many voluntary and commercial companies promoting the products for higher commercial gain with lower incentives to the producers. The organised effort is an urgent need to get control over the traditional product or practice through GI, where it needs to involve organisations, assistance to producers, sorting and packaging, the role of the government, identification problem, financial support, and quality control/tractability.

While keeping the control, it is essential to have the details on type of supply chain, actors, organisation of supply chain and type of coordination, market evolution, marketing control, volume of product, product market, periods, conditioning, supply demand, market regulation, problems in marketing, and regulatory framework, details of other similar products like status of qualification efforts and producers' experience with organic certification, controlling body, the expected impacts like economic, social and environmental impacts.

## **6. INSTITUTIONALISATION OF EFFORTS**

There needs a debate on various platform, in terms of innovations and practices of indigenous communities, which includes folklore, tangible or intangible forms of traditional culture, attraction of international business or as *Sui Generis* laws. The institutionalisation and protection of this knowledge depends on the recognition of the values of local people, their cultural heritage, respect for cultural integrity, their needs, empowerment to exercise their rights,

support to customary cultural practices and better cooperation among the community. Having the rich culture heritage is not enough, it is essential to safeguard traditions, culture, community invention and creativity, legitimate trading activities, transparency, and mutual confidence.

There are various aspects of traditional knowledge like agricultural practices, rituals, community laws, plant species, herbal medicines, animal breeds and other community practices like riddles, names, symbols, dances, drawings, designs, handicrafts, carvings, textiles, costumes, and musical instruments which need to be documented, and which can be identified with the origin of the country. The documentation not only helps to solve the legal issues in context of IP issues, but also provides opportunity to appropriately balance between protection and promotion attributed to a particular geographical origin and for proper planning for perpetual protection.

This documentation process should become the input material for community awareness with proper codes, origin, significance, product development, and its commercial activities. The identity of the good for GI should meet certain conditions and standards or collective marks used by members of TRIPS Agreement. The institutionalisation needs to be undertaken with integrated fabric of the societal activities that help to cover GI, particularly for the registration with source-identifiers. Quality guarantee and business interests of such goods, in line with the trademark system—as trademarks, certification marks, or collective marks for ownership, validity, and right to use in any country also need to be institutionalised. The registration may also have to include materials used, quality, methods of manufacturing, and accuracy, and a collective mark to indicate commercial origin of goods or services in members of a group rather than origin in one party.

## **7. CONCLUSION**

India, even now is not much serious in looking at traditional knowledge as a good that should conform to quality, grade and

other requirements pursuant to standards. The databases of GI products being created are not having distributed approach, it has isolated approach. Some of these databases are not comprehensive, and have to include the details of standard practice to meet the hygiene, appearance, methods, and standards set by the government of the country, and specifications established by the certifier. Hence, imitations by the others would affect adversely the market price and reputation of the genuine products, particularly traditional techniques and patterns. Usually the traditional producers use cheap materials assembled poorly. The local products including the expressions of folklore need to be consolidated (to protect or to challenge undue IP protection) by registering the designs like their shape, motif, design or decoration as a collective right or otherwise as trademark protection, collective mark or certification mark.

There are many products under lifestyle products such as traditional costumes of Indian women which comprise many pattern, reflects traditional culture as well as traditional themes, legends and culture. The protection of collective rights of indigenous products, cultural identity, and traditional knowledge has to be carefully implemented through law.

Many a time it is observed that multinational product-line have used many words appropriated from Indian languages, imagery and folklore in their logo/website. Also, the title held by main heroes and the names of the famous title or languages have been used by changing the spellings and character, which may hurt the inhabitants and spiritual healers. Hence, it is essential that effort should be made to build a record of culture, projection, different perception and images. There are many architecture of the buildings and landscapes significant for promoting culture including Fine Arts Gallery showcasing graphic images in National Gallery catalogue. It is important to find the potential costumers who may use these. For doing so, it is necessary to find out accurate information in every respect including proper permission of the artist and the community so that every contributor and

practitioners get their share of credits in society. It is equally important that the customary laws need to be careful about the foreign misappropriation products/art like patterns in textiles, carpets, photographs, and popular work not in written records or registered. This disrespect and spiritual offences, which the artists would have considered imagery, also need to bring under the laws.

The GI should be considered as a culture in public education and training. The GI practices and products can be protected under a variety of laws like trademark, copyright and industrial designs. The industrial designs or designs are concerned with the ornamental or aesthetic aspect of products like handicrafts, technical and medical devices, jewellery and other luxury items. The industrial design do not protect any technical features of the item. Some of these are also protected under

copyright law in some of the countries. It is very difficult to apply IP rights for culture and cultural products. However documentation, consolidation as database and registration/certification is possible for different aspects of culture, and different type of protection where knowledge capital plays a role.

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