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Dr. Shiv Shankar Singh
Associate Professor, University
Department of Law, Patna
University, Patna, Bihar,
India

A critical analysis of the importance of geographical indications as an IPR and their impact on economic development

Dr. Shiv Shankar Singh

Abstract

Intellectual Property Rights (IPRs) significantly impact a nation's financial growth. The influence of IPRs on economic development can be both positive and negative. Protecting the interests and rights of individuals is crucial for fostering innovation and creation, which are directly linked to the country's development and growth.

Emerging economies, such as India, must focus on increasing market productivity. India has long been recognized for its exceptional services to the global community. Innovation requires substantial investment, but it plays a vital role in economic advancement. Examples from developed countries like the USA, Japan, and China demonstrate that the rate of development increased fivefold following the implementation of intellectual property laws.

Some products are unique because they can only be produced in specific geographical regions, acquiring a reputation due to their distinctive quality traits. Examples include 'Champagne', 'Darjeeling tea', 'Feta cheese', 'Scotch Whisky', 'Havana Cigars', 'Tequila', 'Basmati', and many others. These names often refer to famous places associated with products of particular nature and quality. The common feature of these terms is their geographic connotations, designating specific places, towns, or regions. Interestingly, these names tend to denote the products rather than their place of origin. The uniqueness of these products lies in the link between their quality characteristics and the geographical attributes of the regions where they are produced. Economically, these names are valuable assets, as they can acquire a high reputation and command a higher premium. The type of Intellectual Property that indicates a particular product comes from a specific geographical area is known as a "Geographical Indication".

Keywords: Geographical indications, intellectual property rights, IPR laws, economic growth, financial growth

Introduction

Geographical Indication (GI) is a label used for goods that originate from a specific geographical area and are unique because they are produced exclusively in that region, ensuring a certain level of quality. GIs are commonly used for a variety of agricultural products influenced by local factors such as soil and climate, which contribute to their unique qualities. However, GIs are not limited to agricultural products; they also highlight the distinctive characteristics of goods derived from human factors like local traditions and manufacturing skills specific to the region.

Before the TRIPS Agreement, three main international conventions addressed the protection of Geographical Indications: The Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement (1891), and The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was established in 1958 ^[1]. Despite the TRIPS Agreement introducing a hierarchy in protection levels based on an arbitrary classification of goods, the inclusion of GIs in the TRIPS Agreement can be credited to the European Union's significant negotiating influence ^[2].

India enacted the Geographical Indications of Goods (Registration and Protection) Act in 1999, the first specific law for the registration and protection of GIs. This act became effective on September 15, 2003. Under this act, the Central Government of India established the Geographical Indications Registry in Chennai, overseen by the Controller General of Patents, Designs, and Trade Marks, to manage the registration of GIs ^[3].

Corresponding Author:
Dr. Shiv Shankar Singh
Associate Professor, University
Department of Law, Patna
University, Patna, Bihar,
India

Definition of GI

A Geographical Indication (GI) is a label applied to products that originate from a specific location and possess qualities or a reputation inherently linked to that origin. For a label to qualify as a GI, it must identify a product as coming from a particular place. The product's qualities, characteristics, or reputation should primarily stem from its geographical origin, establishing a direct connection between the product and its place of production."

Intellectual Property and Traditional Knowledge

Integrating development policies with the growth of intellectual property (IP) has become one of the most intriguing and significant strategies for both developing and developed nations in recent times. This is especially true in the field of traditional knowledge, which is deeply rooted in the societal structures of any region. The importance of traditional knowledge is undisputed, and its protection is strongly linked to a country's overall growth. In India, for instance, there are approximately 600,000 licensed practitioners of classical traditional health systems and over one million community-based traditional health workers. The potential of IP to protect this sector makes it an important area of study.

Traditional knowledge is often connected to the development of modern biotechnologies and advancements in pharmaceuticals, agriculture, chemicals, and other fields, making IP a crucial tool for its protection. The appropriateness of applying IPR to traditional knowledge depends on the specific objectives pursued and the extent to which these objectives can be achieved through the various rights within the IP regime [4].

IP and Economic Development

Economic growth has undoubtedly been a major driving force behind the increased focus on the study and importance of intellectual property (IP) over the years. The protection and enforcement of intellectual property rights (IPR) are crucial components of international economic trade and scientific cooperation. However, directly explaining the apparent vital link between IP and key economic indicators, such as national income and living standards, is challenging. This difficulty arises due to various factors, including the diverse cultural and socio-economic backgrounds within a nation, such as India.

The role of foreign direct investment (FDI) in a country's economy is well-recognized. This is a primary reason why many studies linking IP to economic growth have emphasized FDI as a significant parameter. With IPR protection becoming a critical aspect of contemporary international economic diplomacy, multinational companies and firms increasingly rely on copyrights, trademarks, and patents to safeguard their goods and services in the global market [5].

India's approach to IPR in relation to FDI aligns with these general assumptions. For example, bilateral trade agreements with the European Union (EU) that facilitate foreign direct investment reflect this alignment. The EU is currently India's largest trading and investment partner, accounting for nearly a quarter of India's trade and about a seventh of actual FDI inflows. This relationship underscores the importance of IPR protection in attracting foreign investment and fostering economic growth [6].

GIs and Traditional Knowledge

There is no internationally binding instrument focused on traditional knowledge, despite its global significance. Traditional knowledge is vital for providing food and medicine to millions in the developing world, and it plays a crucial role in cultural identity and community cohesion. Moreover, there is no universally accepted definition of traditional knowledge. However, the World Intellectual Property Organization (WIPO) offers a useful working definition:

"Intellectual activity within a traditional context includes the know-how, skills, innovations, practices, and learning that are integral to traditional knowledge systems. This encompasses knowledge that embodies the traditional lifestyles of indigenous peoples and local communities, or that is contained in codified knowledge systems passed between generations and continuously developed in response to environmental, geographical, and other factors. Traditional knowledge is not limited to any specific technical field and may include agricultural, environmental, and medicinal knowledge, as well as any traditional knowledge associated with cultural expressions and genetic resources. "One aspect of Geographical Indications (GIs) that greatly interests developing countries is their potential to preserve and reward traditional knowledge. There are several similarities and connecting points between GIs and traditional knowledge. Both protect the accumulated knowledge of a specific locality or community, reflecting the value that a community places on a product due to its origin and history. Products identified as GIs often result from years of knowledge passed down within a particular region, whether related to agricultural products or handicrafts.

Rather than focusing on innovation, GIs and traditional knowledge emphasize traditional cultural values and practices. GIs attribute value to traditional principles, practices, and reputations, enabling community members to convert their knowledge into livelihood and income. As this leads to increased income, younger community members may be encouraged to continue these traditional practices, thereby ensuring the preservation and continuation of traditional lifestyles.

The nature of Geographical Indications (GIs) as a collective right is particularly well-suited to the protection of traditional knowledge. Traditional knowledge is often held and shared collectively within a community, making it unsuitable for other contemporary forms of IP rights, such as trademarks or patents. A GI enables a group to retain control over its knowledge, establishing rules for production while allowing all members to benefit economically from the shared knowledge. No institution or individual exerts a monopoly over this knowledge, which remains within the community. Simultaneously, a GI prevents outsiders from free-riding on the knowledge accumulated over the years or using it in a derogatory manner. Additionally, a GI cannot be assigned, thus protecting the community from being marginalized. There is also no time limitation on GIs: the protection can remain in place for as long as it benefits the community.

Another interesting aspect of using GIs to protect traditional knowledge is that the GI system allows the community to take control of its products and regulate production on its own terms. Instead of the government or any other institution determining who has the right to claim traditional

knowledge belonging to a community, the community sets its own internal rules. The indigenous community can evolve these rules according to its requirements.

Reasons for Popularity of Geographical Indications

There are numerous opportunities to enhance the popularity of geographical indications (GIs), which can increase the market value and growth of producers at the origin, such as through trade standards. Protecting certain information offers a guarantee to consumers. From a consumer's perspective, GIs attach significant characteristics to products and services that may not be immediately obvious. For example, consumers cannot easily determine the qualities of a wine, its production process, or whether a cheese is made according to a traditional method simply by inspecting the product. A GI bridges the relationship between a product and a specific geographic region, along with its unique production methods, characteristics, or qualities known to exist in that region. This clarity removes any doubt for consumers and generates interest in the product.

According to a United States consumer survey in 2005, 72% of respondents believed that geographic characteristics, such as soil, influence the taste and quality of foods. Similarly, a 1999 European Union study of 20,000 consumers purchasing GI products found that 37% of respondents cited the guarantee of origin as their primary purchase motivation. For 35%, the motivation was the expected quality, for 31% it was the particular place the product came from and its production methods, and for 16%, it was the tradition associated with the product [7].

Geographical Indications and Economic Growth

After analyzing the economic significance of intellectual property rights (IPR) in the context of foreign direct investment (FDI), it is important to recognize that certain areas within this field have demonstrated an exceptional impact on a state's economic performance. Another crucial area with remarkable economic implications in recent times includes geographical indications (GIs) and appellations of origin [8].

In recent times, the growing importance of geographical indications (GIs) has become evident, as they aim to protect the "Quality, reputation, or other characteristics of goods that are fundamentally linked to their geographical origin." In simple terms, GIs promote goods from a specific region or country, making them eligible for protection against infringement or unfair competition. Typically, a geographical indication consists of the name of the place where the goods originate." Agricultural products often possess qualities derived from their place of production, influenced by specific local factors like climate and soil. Whether a sign functions as a geographical indication depends on national law and consumer perception. Furthermore, initiatives by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) have given new momentum to the protection of GIs. Basmati is an indigenous variety of rice that has been produced in India (and also Pakistan) for a long time and is a significant contributor to the net agricultural income. When the issue of its protection through geographical indication (GI) came to the forefront, a general outcry was inevitable. The apprehension arose when the U.S. Government considered granting intellectual property protections to Basmati strains of rice developed by the

company Rice Tec. This led the Indian government to appeal, persuading the U.S. patent office to reject three of the more important claims in the patent, which suggested a novelty in the Basmati-like characteristics of the three rice strains developed by Rice Tec. However, this does not prevent Rice Tec and other U.S. companies from marketing their aromatic rice as 'Basmati-like,' 'superior to Basmati,' or 'American Basmati,' which essentially constitutes the misappropriation of a geographical indication.

Basmati is a prime example of a product whose uniqueness and commercial value are intrinsically linked to its geographic origins. The urgency of the matter is underscored by the fact that, despite over 6% growth in agricultural income over the years, the government still aims to modernize Basmati cultivation due to its high importance for the entire polity. Efforts are underway to strengthen India's case internationally by classifying Basmati varieties in terms of GIs. The adoption of new national legislation in this regard is a positive sign of India's earnest endeavor to address the issue.

Geographical Indication- Factor for Rural Development

The study indicates that, under appropriate conditions, geographical indications (GIs) can contribute significantly to rural development. The right to use a GI generally belongs to regional producers, and the added value generated by the GI benefits all such producers. Because GI products are likely to command a premium price, they contribute to local employment creation, which can help prevent rural migration to urban areas. Additionally, GI products often generate significant spin-off effects, especially in tourism and gastronomy.

Geographical indications can bring value to a region not only through job creation and higher income but also by promoting the region and protecting and harnessing the energy of the youth, preventing them from leaving the area. This can contribute to the creation of a regional brand, fostering a sense of belonging among the inhabitants. However, it is important to note that merely developing a GI for any product does not automatically guarantee success or regional development. For GIs to contribute effectively to development, several conditions must be present in the region, and the specific GI scheme must be well-designed. Inclusion of human factors is equally essential to ensure that the GIs of various handicraft products, such as 'Kanchivaram Silk' from Tamil Nadu and 'Muga Silk' sarees from Assam, reflect the skilled labor that produces them.

Grey Area and Scope for GI

However, protection of GI is more inclined to agricultural products and process. Agricultural products encompass not only those derived directly from farming but also all related factors, such as meat, fish, dairy, carcasses, and even animal excretions. Expanding the interpretation even to the water, stone, earth, salt etc. Since, the survival of animals and their product is due to the very fact of climatic conditions, geographical region and rearing up of those animals. The example of water which in Hindu religion is considered as God i.e. 'Ganga Jal' is considered to be the sacred water and the only water which can be kept for longer duration and do not stink comparatively to the other water. Once the GI case of Basmati rice is resolved based on the crop grown in the Gangetic terrain, the significance of Ganga water cannot be

overlooked. Although basic food items such as meat, fish, and dairy produce can be registered for GI, it is important to reference Article 22 of the TRIPS Agreement. This article does not exclude any products that are attributable to the geographical conditions or origin of a specific region.

Conclusion

Geographical Indications (GIs) certify that a product's characteristics are linked to its geographical origin, climatic conditions, and local traditions. This certification attracts consumers who are willing to pay a premium for such products. Brand recognition plays a crucial role in marketing, providing a competitive edge to products labeled with GIs. In essence, GIs offer legal protection that enhances and safeguards local cultures and economies by promoting products and services globally. They have significantly boosted the quality of rural employment and economic development.

According to the TRIPS Agreement, GIs identify a product as originating from a specific territory or region where its quality is inherently linked to its geographic origin. The definition underscores that products or services derive their unique qualities, reputation, and characteristics from their specific locality, influenced by climatic and geographic conditions, as well as production methods.

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