

The law of Geographical Indications (GIs) is linked to the terroir, that is the quality of a product is essentially attributable to the territory where the product originates from. GIs support local production and are an important economic tool for the uplift of rural and tribal communities. Unlike other Intellectual Property Rights (IPRs) which guarantee the protection of individual interest, GI is a collective right. If their products qualify, producers can use the collective GI mark while commercially exploiting their products.

India implemented a sui generis legislation on GI in 1999, a prime reason being its obligation to have a law on GI as a member of the World Trade Organisation-Trade-Related Aspects of Intellectual Property Rights (WTO-TRIPS).

Making India GI brand conscious

The politics behind the incorporation of GI in TRIPS is revealing. The United States was not a supporter of GI, and it was lobbying by the European Union (EU) that ensured its inclusion in TRIPS. The EU already had its domestic mechanisms in place to protect GIs and was keen to protect its products in international markets.

Interestingly, the debate on GI in India has never gone beyond Article 23 of TRIPS, which gives a preference to wines and spirits over other goods. Scholars in India have always observed that the additional protection of wines and spirits is a huge setback for GI trade related to the developing countries whose GIs are largely related to agricultural and handicraft products. The protection given to wines and spirits is absolute and unqualified, and unlike right holders of other goods, the proprietor of GI relating to wines and spirits does not have to prove that incorrect use of the geographic origin is misleading as well.

As India has failed over the years to introspect on its own domestic legislation, it is important to highlight the shortcomings of the Indian GI Act. It is important to note that TRIPS only provides a minimum standard of protection. Nowhere is there an insistence on a particular framework for protection of GI. In fact, TRIPS does not even mandate a sui generis mode of protection for GI.

Beyond social media

Against this backdrop, proof of origin is a mandatory criterion for registering GIs in India. This provision is borrowed from the EU's regulations on GI protection. What is cause for concern is not proof of origin as a criteria to register GI, but the focus on historic proof in the form of documentary evidence (such as gazetteers, published documents, news articles, advertisement materials) to bring out the historic development of GIs as laid down under GI Rules, 2002, and clarified by the GI Manual of the Office of the Controller General of Patents, Designs and Trademarks, and Registrar of Geographical Indications to establish proof of origin. The point here is about the rationale behind including such a provision in our law as there was no mandate under TRIPs to do so.

Documentary evidence as proof of origin may be a foolproof mechanism to ensure the link between the product and territory, but in a country such as India where there are regions like the Northeast where oral history has had far wider convention over written history, this provision will prove to be a formidable hurdle.

Assam has been exploring its natural, agricultural and traditional products as potential GI material. One such example is a traditional rice wine called 'Judima' which is made by the Dimasa tribe of

Dima Hasao, one of the autonomous hill districts of Assam. The State government has been tracking academic discourse on the subject with the intent of exploring possibilities in registering it. But a stumbling block has been the difficulty in gathering documentary evidence as proof of origin. It is the same case with many other products from the Northeast. For example, in the case of 'Judima', the word 'Ju' stands for drink and 'Dima' for Dimasas, but the absence of any documentary proof makes the case a difficult one to prove.

Therefore, what is the rationality behind including and retaining such provisions in the law? For most products, especially those of tribal communities, this is bound to be a recurrent problem. A few years ago, India faced difficulties in a patent case involving turmeric when two scientists of the University of Mississippi Medical Centre, were granted the U.S. patent for the use of turmeric in wound healing. India's Council of Scientific and Industrial Research (CSIR), which opposed this, was asked by the U.S. Patent and Trademark Office to submit documentary evidence of usage of turmeric for healing purposes in India in order to revoke the patent. On finding the existing documentary evidence insufficient, CSIR was compelled to launch a project of translating ancient Sanskrit texts which were later produced as evidence, and accepted.

So, what happens in cases such where a written history is rare? Do the products of the region then not stand a chance under the GI law? In a particular instance, the GI Registry considered etymology in establishing proof of origin. However, this does not guarantee that a similar stance will be adopted while considering other potential GI products, especially when the existing law leans heavily on documentary proof. The GI authorities should amend the existing provision.

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The definition of harassment needs to be constantly updated, and the process for justice made more robust

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