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GIS: Introduction, Major Issues in WTO and their Socio-Cultural Impacts with special reference to India

Vikram S. Chauhan*1, Meenakshi Parihar2, Nidhi Gauba Dhawan3, Manisha Mavai4, Mona Kejriwal5, Raaz Maheshwari**6

1. Department of Botany, SBRM Govt PG College, Nagaur, Rajasthan, India
 2. Department of Botany, JNVU, Jodhpur, Rajasthan, India
 3. Amity Institute of Environmental Sciences, Amity University, Noida, UP, India
 4. Department of Physiology, AIIMS, Jodhpur, Rajasthan, India
 5. Department of Botany, RD National & WA Science College, Bandra (W), Mumbai, India
 6. Department of Chemistry, SBRM Govt PG College, Nagaur, India
- Email: *vikkiysingh2000@gmail.com; **gcacs16@gmail.com

ABSTRACT

Geographical Indications are instruments of IPRs (intellectual property rights) to protect traditional methods of production and corresponding societies which are linked to some territory or region. There are so many issues and concerns which impact Indian GIs in global markets. Major problems faced by Indian products and also some concerns in WTO related to various aspects of implementation of protection of GIs, which are addressed in this review.

Key Words: TK, IPR, WTO, sui generis system

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INTRODUCTION

Under the contemporary realm of WTO, GIs are important constituent of IPRs. GIs are incorporated under article 22 to 24 of TRIPS. TRIPS defines a GI as "any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin". GI also prevents the use of product's name as a generic name. GI, in addition to geographical distinction, may also have some "perceived indication" of particular region, also eligible for GI. For example, Basmati is not a name of place or region but it insinuate the rice variety which typically grown in some terrains of India and Pakistan.

International Conventions

Before the materialization of TRIPS, following multilateral conventions dealt with international GI related laws. These are: PCPIP - 1883, MA - 1891 & LAPAO & IR -1958. All these conventions couldn't furnish impact because limited number of signatories and their restricted scope. TRIPS provided larger protection of GIs because of substantial number of signatories. TRIPS came out with enforcement and dispute settlement processes. WTO members rendered free to choose any following mechanisms, which suits them, for providing protection of GI at national level: laws focusing on business practices, trade mark law and *sui generis* protection.

Indian Scenario

India adopted the *sui generis* system for GIs protection with the enactment of 'The GIGs (R & P) Act, 1999' (GI Act), combined with the , GIGs (R & P) Rules, 2002 (GI Rules).The GI act enforced in 2003. Darjeeling tea was first to be protected under this act while there are 207 products are now under GI protection. The Union Government of India has instituted the Geographical Indications Registry which have all India jurisdiction in Chennai. The GI Act is governed by the CGPD & TM (RGI).

Benefits of GIs

Community benefits

GI rights are conferred to community or a group of individuals; it acts for community participation needed to strengthen production and product supply chain.

Cultural heritage augmentation

Since GIs are provide exclusive protection to regional or local art, crafts, agri-products and designs, it operates to preserve TK for production methods that ensure quality linked of the *terroir*

Consumer benefits and promotion of tourism

Because of ensured quality, their exotic nature and linked market brand reputation enable them to fetch more premium price for such products. GI protected products face lesser competition from similar products. GI facilitates to provide an international identity to the *terroir* which promotes tourism and exports.

Environmental friendly

Products linked with agriculture are based on conventional practices which are more environmental friendly and thus they conserve the local ecosystem and biodiversity.

INDIAN GIS: MAJOR OBSTACLES IN GLOBAL MARKETS

From registering to marketing of products, the Indian GI holders have to confront with many challenges in International market.

Efficacious Marketing

Effective marketing and promotional endeavors are required for exploitation of full commercial benefit of GIs. The manufacturers need to identify distribution channels and confront various intermediaries. Brand reputation may take long time to achieve market eminence. However, consumer behavior and choices change with time, so sustained consumption is required to perpetuate the GI product.

Defense, enforcement and Surveillance against counterfeiting and free-riders

After registering as GI in a foreign jurisdiction, there must be a sustained effort to defend and enforcement is required to prevent free riders from counterfeiting. Any infringement in form of poor quality imitation and misuse of brand name may malign the reputation of GI product. For example, imitations of Banarasi sarees are made by China from cheap quality silk, which is being cheaper, poses a threat to the original product. Similarly, pashmina shawls which are made from fleece of mountain goat, are under peril due to swarm of imitations from Nepal. Monitoring in the foreign markets requires a watch dog agency to keep vigilance, which is very costly. For example, Compumark's services were hired by Tea Board to prevent the misuse of the 'Darjeeling.

Establishing GI status in foreign countries

GI protection under regime of WTO can be obtained can various target countries as per their respective legal framework. However such frameworks are highly variable and it becomes a formidable task which requires help of costly legal services. Countries which provide GI protection under trademark law, either a collective or certification mark is given or this protection may be limited to logos only. Countries which have adopted sui generis protection for GIs, the appellant has required to narrate the distinctiveness of the product. Such legal attempts are again very costly.

Quality control and standardization

Illiberal Quality control and strict adherence to standardizations make the GI system very rigid which is considered as an obstacle of new innovations and flexibilities according to consumer taste variation and technological advancement. Such quality controls involve third parties.

GRIDLOCKS AND ISSUES AT WTO

The Doha round of negotiations was aimed to have discussions for various issues on GIs, which are mentioned in following paragraph. This discussion was reached to gridlock upon various issues and led to collapse of dialogue in Cancun 2003.

Multi-lateral registry

At present, GI appellants have to register their products in diverge legal frameworks in different countries. There is an absolute requirement for establishment of a multi-lateral registry, which can accommodate all eligible products so the legal workout in different countries can be reduced. Here, EU wants the register with a legal effect, while US supports a non-binding system.

Double standards between general GIs and GIs related to wines and spirits

As in Lisbon agreement, the present system of WTO provides excessive protection to GIs pertaining to wines and spirits under Article 23 of TRIPs. Such higher prior protection is not-reasonable and blamed to be nothing but a result of lobbying of strong wine manufacturers of Europe. It is demanded in Doha development round by several members of WTO that anti-usurpation protection under article 23 should be extended all GI products.

Extended GI protection

Supporters of extended GI protection argue that it natural right of producer to obtain such anti-
 usurpation protection but opponents of extension hold that purpose of IPR is to incentivize innovation on
 term basis and it does not rationalize ex post facto and sustained reward. Perpetual reward is restrictive
 to market competition and ultimately will provoke market protectionism.

SOCIO CULTURAL ASPECTS

GI dominated regions are considered to have rich cultural heritage and traditions. Following are some
 aspects about how GI impact on culture and societies.

Protection of Indigenous hamlets, traditions and folklore

In India, Chanderi fabric, madhubani paintings, Konark stone carving, Bustar wooden crafts and similar
 products like handicrafts and textiles, which have community linked production, are protected under GI
 Act. Similarly Phillipines enacted law for "*controlling access to ancestral lands, access to biological and
 genetic resources and to indigenous knowledge related to these resources.*" Under UNESCO, the Convention
 for the Safeguarding of the Intangible Cultural Heritage was signed in 2003. The convention aims for
 protection and conservation of intangible cultural heritage.

Positive interaction of land, people and trade

GI laws preserve to act traditional manufacturing techniques, which otherwise can diminish by modern
 mass production techniques. The embodied requirement of distinctiveness of products makes its
 essential to conserve local resources for sustainable commercial use. So economic reward encourages the
 local civilization to prevent cultural annihilation and preserve their natural and cultural legacy.

Neutralization of cynical impacts of globalization

Effects of globalization are rapidly percolating in each aspect of economies and societies. Due to
 delocalization of production and uniformity of processes and products have blurred the individuality of
 economies and societies.

Social discreteness is vanishing, as described by Professor Tomer Broude as "*the devastation of local
 cultures is the product of a triumph of cultural hegemony or cultural imperialism on the ideological
 battleground of culture. The result of which is westernization or 'Americanization.'*"

CONCLUSION

GIs is considered a valuable mechanism for protection of niche- markets which in turn work to safeguard
 the traditional knowledge and methods of production. Traditional knowledge always bestows a cultural
 component and is especially beneficial for developing countries. However there are many aspect of great
 concern for their international execution, they present important IPR mechanism for prevention and
 conservation of rights and culture of many indigenous societies. Most of the countries, including India,
 have come forward to adopt GI laws for providing economic privileges to the aboriginal communities and
 their respective arts. GIs in this respect serves for sustentation of the cultural eccentric-ness by
 promoting ancient methods of production linked to the *terroir*.

ABBREVIATIONS

IPRs (Intellectual Property Rights (IPRs) TK (Traditional Knowledge), WTO (World Trade Organization),
 UNESCO Paris PCPIP (Convention for the Protection of Industrial Property) ,MA (Madrid Agreement),
 GIGs (Geographical Indications of Goods) ,R & P (Registration and Protection) , LPAO & IR (Lisbon
 Agreement for the Protection of Appellations of Origin and their International Registration), CGPD &
 TM(Controller General of Patents, Designs & Trade Mark)

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