

GEOGRAPHICAL INDICATIONS IN INDIA: THE CASE OF KADAKNATH CHICKEN OF JHABUA

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ABSTRACT

GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: "Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin. The prime purpose of the geographical indications act is to provide a legal protection to geographical indications which encourages the marketers to expand their business worldwide. Therefore, the protection of geographical indications boosts exports. A protein-rich breed of chicken, popularly known as 'Kadakhnath', virtually became a bone of contention between Madhya Pradesh and Chhattisgarh states, with both staking claim over its nativity. The Gramin Vikas Trust of Jhabua applied for the GI tag in 2012 on behalf of the tribal families involved in breeding it. The meat from this breed has a geographical indication (GI Tag) tag. It was approved by Indian government on 30 July 2018. The breed is maintained and improved by Krishi Vigyan Kendra Jhabua.

KEYWORDS

Jhabua, Kadakhnath, WTO, IPR, tribal welfare, consumer protection.

1. Introduction

- Meaning of GI tag : "GI is an indication used on products that have a specific geographical origin and possess the qualities or reputation that are due to that origin. "GI products can benefit the rural economy in remote areas, by supplementing the incomes of artisans, farmers, weavers and craftsmen. The Department for Promotion of Industry and Internal Trade is actively involved in promotion and marketing of GIs,"
- According to World Intellectual Property Organisation: A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.
- **Definition of GI tag as per Article 22(1) of WTO Trips agreement:** GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: "Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin.

2. Objective of the study

- To provide an understanding of the concept of geographical indications.
- To provide a historical backdrop of GI.
- To discuss the advantages of GI for developing countries.
- To analyze the legislation of GI in India.

- To provide the legal framework of GI in India.
- To analyse the famous case of Kadaknath: M.P & Chattisgarh.

3. Methodology

This paper consists of conceptual framework of Geographical Indication and provides an insight to various aspects of it. The data has been gathered through secondary sources. Literature has been reviewed from readings, quotes and observations from legendary Intellectual Property Rights authors, newspapers, journals and newspaper leading to an analysis of the topic: GEOGRAPHICAL INDICATIONS IN INDIA & THE CASE OF FAMOUS KADAKNATH CHICKEN

4. History of GI

Prior to the TRIPS agreement of the Uruguay round which concluded in 1994, there were mainly three international conventions dealing with protection of IGOs, i.e. 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 (1958). While the Paris Convention and the Madrid Agreement dealt with 'indications of source', the Lisbon Agreement focused on protection of 'appellations of origin' However, there remains the problem of a hierarchy in the levels of protection based on an arbitrary and specious categorisation of goods under the TRIPS Agreement. In international trade negotiations on IPRs, the European Union has always shown keen interest and even aggression in seeking effective protection to GI goods. The negotiations, particularly on the GI section of the TRIPS Agreement, were among the most difficult and this stemmed from clear division between the main proponents of the TRIPS agreement-the US and EU. The European Union constantly emphasized on inclusion of GI in the TRIPS during the Uruguay rounds of negotiation. The fact that GI was finally included in the TRIPS agreement can be attributed to the EU's remarkable negotiating capacity. The final outcome was tilted in the interest of the European countries. The Current TRIPS text provides a basic standard of protection to all other goods and higher standards of protection to wines and spirits in which they have clear advantages. The EU and its member states have a diverse portfolio of over 6,000 protected GIs. (Kasturi Das, 2006)

5. Advantages of GI for developing countries.

- **C Bramley & JF Kirsten(2007)** in their study provide a justification for the effective protection of Geographical Indication in the developing countries
- **N.S Gopalkrishnan, Prabha S. Nair & Aravind K.Babu (2007)** in their research examined the nature and content of the legal tools adopted to protect GIs and associated traditional knowledge by India, Thailand, Malaysia, Singapore, Indonesia, Jordan, China and Pakistan. Their study reveals that the effective protection of GIs nationally and internationally is going to contribute substantially to the socio-economic conditions of these communities.
- According to Bramley & Kristen 2007 G.I protects culture by preserving traditional protection methods, habits of consumption and cultural identity of a nation, regions or specific area, thus performing the cultural protection function.

The importance of GI tags can be understood from the following points:

1) **Boosts Exports:** The prime purpose of the geographical indications act is to provide a legal protection to geographical indications which encourages the marketers to expand their business worldwide. Therefore, the protection of geographical indications boosts exports.

2) **Economic Growth:** The protection of geographical indications helps in the economic prosperity of the producers. The marketing of GI products enhances the secondary economic activities in the GI region which boosts the regional economic development. The protection of geographical indications helps in building a good reputation and rewards the producers with incentives.

3) **Prevents Misuse of GI Tag:** A geographical indication is represented by a GI tag. The protection of the GI tag prevents misuse of a registered Geographical Indication. The producer has a legal right to charge anyone not belonging to the GI region trying to use their GI tag and save his reputation from being damaged. The farmers selling products of a given region have to face less competition from fake people who sell bogus products.

4) **Boosts Tourism:** The protection of geographical indications builds a reputation for the GI product throughout the world. More and more people notice the various GI products from various regions which in turn motivates them to visit those places for accessing those products. This helps in the growth of the tourism industry.

5) **Role of GI in Rural Development:** Geographical indications are mostly traditional products, produced by rural communities over generations that have gained prominence on the markets for their precise qualities. The recognition and protection on the markets of the names of these products allows the community of producers to devote in maintaining these precise qualities of the product on which the reputation is built. This might also allow them to invest together in promoting the reputation of the product.

6. Legal framework of GI in India

The Geographical Indications Act of India 1999

Preliminary GI ACT

1.(1) This Act may be called the Geographical Indications of Goods (Registration and Protection) GI Act, 1999.

1.(2) It extends to the whole of India.

1.(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this GI Act shall be construed as a reference to the coming into force of that provision.

➤ Salient features of Geographical Indications Act,1999

1) What is a Geographical indication?

- It is a form of Intellectual Property Right belonging to a community
- It indicates a definite geographical origin of a Product
- The GI Tag is given to agricultural, Natural and Manufactured goods
- A product may be applied for the GI Status provided it has a special quality or reputation or any other peculiar characteristics limited to a specific Geographical territory.

2) What does a Geographical indication provide?

A Geographical Indications enables the rightful user to prevent the misuse of such products by a third party who describes the Products

- of having specific origin but is made elsewhere

- of having certain unique qualities even when they do not.
- of having met applicable standards as mentioned in GI Registry, even when it is not.

3) Can a Geographical indication be registered in the name of an individual?

No. Geographical Indications is intended for a community or is a right given to a group. Hence it is not possible to get Geographical Indication registration in the name of an individual.

4) What is the advantage in the registration of Geographical Indications?

Confers legal protection to Geographical Indications Tagged products

No person other than the Producer or those who procure the GI Products from its very Origin and abide by all the applicable standards as mentioned in GI Registry are entitled to Use the name of Such Products.

5) Negates false Trade practices: The Geographical Indications Act of India 1999, prevents unauthorized use and imposes penalty and punishment for Using and selling bogus and deceptive GI Tagged products.

6) Symbol of authenticity: GI Tagged Products helps consumers Identify between Fake and genuine Products. All products are guided by Standards whereas GI functions under the Law.

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Symbol of Authenticity. GI Tagged Products helps consumers Identify between Fake and genuine Products. All products are guided by Standards whereas GI functions under the Law.

7) Who can apply for the registration of a Geographical Indication?

Any association of persons, producers, organization or authority established by or under the law can apply; the applicant must represent the interest of the producers.

8) Where does one apply for a Geographical Indication Status?

The application has to be filed to the Registrar of Geographical Indications at Chennai.

9) What is time period for getting a GI registered?

The average time taken is around Twelve months from the date of Receipt of Application.

10) What is the term of a Geographical Indication?

There is no expiry date for Geographical Indications, but has to be renewed every 10 year.

11) Who can use the registered Geographical Indications?

The registered proprietor or the authorized user has the exclusive right to use geographical indication in relation to goods in respect of which it is registered.

Whether the Geographical Indications Registered in India valid all over the world?

No. Like any other Intellectual Property Rights, Geographical Indications are also territorial. The rights can be enforced in other countries only if it is registered in that particular country.

12) Can a registered Geographical Indication be assigned, transmitted, etc.?

No. Geographical Indications is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. But in the case of an authorized user dies, his right devolves on his successor in title.

13) When a GI is not register able?

- When it creates confusion or when it is deceptive.
- When it is against the stipulated laws.
- When it comprises repugnant or obscene content.
- When it is likely to harm religious beliefs.
- When it falsely represents the geographical origin, region or locality or as the case may be.
- When it falsifies the qualities or uniqueness as claimed in the application.

14) Who is an authorized User?

Authorized user of a GI Registered under Section 17 can be any person claiming to be a producer of the goods in the definite geographical territory. Such Producer should apply in writing to the GI Registry along with prescribed fee.

15) What are the benefits that you get by being an Authorized user?

Authorized Users gets the exclusive right to use the Registered Geographical Indication and can independently sue an infringer. The Authorized User can also renew or restore a registered Geographical Indications, if the Registered Proprietor fails to renew the same. He further gets the right to be impleaded in any rectification proceedings against a Registered Geographical Indication or Appellate Board.

16) When is a registered Geographical Indication said to be infringed?

- Claiming to have produced it in a Geographical territory as mentioned in the GI Registry even when it has been produced elsewhere.
- False Representation, using and selling of bogus and deceptive Products.
- Not adhering to GI Act, 1999 Government of India.
- Not adhering to Specifications and standards mentioned in the GI Registry.

17) What is the penalty for GI infringement ?

The GI Act of India (1999) provides for Imprisonment for a term of 6 months that may be extended to 2 years and a minimum fine of Rs 50,000 that may be extended to Rs. 2,00,000.

7. Case of Kadaknath: M.P V/S Chattisgarh.

- **What is kadaknath:** According to Wikipedia “**Kadaknath or Kali Masi** is an Indian breed of chicken originating from the Jhabua and Dhar districts of western Madhya Pradesh, where it is known as "Kali masi" ("fowl having black flesh"). There are three varieties within the breed, jet black, golden and pencilled. It has a lower fat content of 0.73 — 1.03% compared to 13 to 25% in most other chicken breeds”. The meat from this breed has a geographical indication (GI Tag) tag. It was approved by Indian government on 30 July 2018. The breed is maintained and improved by Krishi Vigyan Kendra Jhabua.

- **Case History:** The Kadaknath case is a perfect example of the fact that GI tag is allotted on the basis of origin of the good (in this case good is Kadaknath chicken). The case history can be summarized as follows:
 1. A protein-rich breed of chicken, popularly known as 'Kadaknath', virtually became a bone of contention between Madhya Pradesh and Chhattisgarh states, with both staking claim over its nativity. The two neighbouring states filed applications with the Geographical Indication registry office in Chennai to obtain the 'GI tag' for this black-winged chicken variety.
 2. In 1978 in Jhabua, MP had set up the first poultry farm for this breed of chicken. Excessive consumption combined with the introduction of improved breeds such as the Rhode Island Red and recurrent outbreaks of Newcastle disease were diluting the Kadaknath gene pool and numbers plummeted in the late 1990s. Since 2003, a government programme has been running in tribal areas of Madhya Pradesh to enhance livelihoods of village communities. Prompted by a suggestion by local farmers, the Madhya Pradesh Rural Livelihoods Project (MPRLP) introduced the Kadaknath birds in new areas to support and strengthen local livelihoods.
 3. Birbal Sahu, a senior scientist at the Krishi Vigyan Kendra in Kanker district of Chhattisgarh, brought about 1,000 Kadaknath chicks from Jhabua in MP in 2013. In a period of just five years, Chhattisgarh started producing the chicken variety in abundance and claiming the GI tag.
 4. The Gramin Vikas Trust of Jhabua applied for the GI tag in 2012 on behalf of the tribal families involved in breeding it. Global Business Incubator Private Limited (GBIPL), Chhattisgarh, a private company was hired by Chhattisgarh government for improving the livelihood of tribals of Dantewada district. The bird variety is reared in a natural environment in Dantewada and not fed with the ready-made fodder. The state government-supported self help groups of tribal women, running over 160 poultry farms in Dantewada, are engaged in the production of about four lakh chickens of the Kadaknath variety for meat annually, Other private poultry farmers are also engaged in rearing the bird in Chhattisgarh,
 5. The Dantewada administration, while taking assistance of the Federation of Indian Chambers of Commerce and Industry (FICCI), an industry body, applied for the GI tag in 2018, owing to the uniqueness and high production of Kadaknath in the district.
 6. As per the information available on the Geographical Indications Registry, India, the application, made in the category of "Meat Product, Poultry & Poultry Meat", was approved on July 30, 2018 and the application of MP was approved.

Summary of GI tag given to kadaknath Chicken

Origin	<p>Jhabua, Dhar & Barwani districts of Madhya Pradesh and the adjoining districts of Rajasthan and Gujarat spreading over an area of about 800sq. miles is considered to be its home tract.</p> <p>Primary Centre of origin: - Called as '<i>Jhabua District</i>' of Madhya Pradesh. 22° 45' N Latitude and 74° 38' E Longitude.</p> <p>Secondary Centres of origin:-Dhar (Madhya Pradesh) 22° 35' N 75° 20' E, Barwani (Madhya Pradesh) 22° 03' N 74° 57' E</p>
Proof of Origin (Historical records):	<p>In 1982, the Animal Husbandry Department of Madhya Pradesh established a breeding farm and hatchery in Jhabua district, with the objective of conserving and propagating Kadaknath in and around the district.</p> <p>The home tract of Kadaknath is mainly in the Jhabua and Dhar districts of in western Madhya Pradesh and adjoining areas of Gujarat and Rajasthan. (Estimation of genetic heterogeneity of chicken germplasm being used for development of rural varieties utilizing DNA markers. Rudra n. Chatterjee*, matam niranjan, ramashraya p. Sharma, meenakshi dange And tarun k. Bhattacharya .<i>Project Directorate on Poultry,Rajendranagar, Hyderabad 500 030, India; Journal: Indian Academy of Sciences</i></p> <p>Source: GI journal no: 104, March 28, 2018.</p>

8. **Conclusion:** The Kadaknath case is a perfect example of the fact that GI tag is allotted on the basis of origin or nativity of the good not on the basis of the production . Allotment of GI tag to Jhabua district of M.P will further strengthen the efforts of government to provide sustained livelihood to the tribals of Madhya Pradesh.

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