



Agricultural And Horticultural Products Of Kashmir: A Case For Legal Protection As Geographical Indications In India

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Abstract

Geographical Indication, an exclusive community right, recognizes the critical roles played by location, climate, and human know-how in distinguishing products based on their unique intrinsic characteristics. It is a powerful tool for safeguarding and rewarding not only the market potential of elite items, but also the traditional knowledge associated with them. Since the passing of the Geographical Indications (Registration and Protection) Act in 1991, 112 agricultural items have received GI tags till now with horticultural items accounting for more than 75% of the total. The ownership of GIs in agricultural and horticultural crops by state indicates Maharashtra and Karnataka activism. In terms of handicrafts, Jammu and Kashmir has seven GIs that have already established enormous goodwill and reputation on a global scale, such as Kashmir Pashmina, Kani Shawl etc. however, while other states are geographically indicating their agricultural and horticultural products, Jammu and Kashmir has only earned GI status for only one agricultural product, namely Saffron (*Crocus Sativus*). In terms of other similar products such as Apple, Walnut, Almond, Black Zeera, Rice, and so on, Jammu and Kashmir has yet to take any initiative to register them as GIs. This paper discusses various geographical indications that could be considered for registration in light of revenue statistics generated by such products. It also discusses the various challenges and threats that agricultural and horticultural sector in Kashmir face, thereby stifling their growth. This paper discusses different geographical indications which could be considered for registration in the light of statistical figures of revenue generated by such products. The paper also analyzed the role of GI's in protecting traditional knowledge associated with these products. It also discusses various

challenges and threats which the agricultural and horticultural sectors in Jammu and Kashmir are facing.

Keywords: Geographical Indication, agriculture, horticulture, Kashmir Saffron, Traditional Knowledge

INTRODUCTION

The economic development of any country is dependent on abundant natural resources, adequate skilled and unskilled labor, adequate tangible assets, superior innovations, adequate intellectual property, and proper resource utilization; however, intellectual property benefits business communities and the country in various ways, such as rival companies losing market share due to a competitor's patents. It opens up new technological possibilities in published inventions, making it easier to gain a competitive advantage over competitors. It also enables customers to distinguish one producer's products and services from another, increases an organization's profit margin, fosters customer loyalty, and assists a specific country in increasing revenue, among other things.¹

Intellectual property is a product of the mind that is owned in some way by an individual or business. According to the World Trade Organization (WTO), Intellectual Property refers to the rights granted to individuals over the creation of their minds. They usually grant the creator exclusive rights to use his creation for a set period of time.²

Thus, it is clear that IPRs are property rights over intangible assets created by human ingenuity and creativity. IPRs are divided into two categories:

- Intellectual property (Copyright) and neighboring rights.
- Intellectual property, including Patents, Trademarks, Industrial designs, Geographical Indications, and so on.

Geographical Indication (GI) indicates that certain goods are from a specific country, region, or locality and have unique characteristics, qualities, or reputations that are attributable to their origin. These special characteristics, qualities, or reputation may be due to a variety of factors, including natural factors such as raw materials, soil, regional climate, temperature, moisture, and so on; or the method of manufacture or preparation of the product, such as traditional manufacturing methods; or other human factors, such as specialization in the production or preparation of certain products and the maintenance of certain quality standards. Geographical indications are valuable property rights of the producers from specific geographical regions.

¹Talwar Sabanna (2010), Intellectual Property Rights and Economic Development, Serial publications, New Delhi, India, Pp. 1-2.

²Keeling, D. (2003), Intellectual Property Rights in the EU law: Free movement and competition law, Vol. 1 Oxford University Press, Oxford, UK.

Some examples of geographical indications include "Florida for Oranges," "Idaho for Potatoes," "Havana for Tobacco," "Kashmir for Pashmina and Kani Shawls," "West Bengal for Darjeeling Tea (word and logo)," "Kerala for Malabar pepper," "Maharashtra for Purandar Fig," and "Kerala for Malabar pepper" etc.

Geographical indications thus reflect, among other things, the traditions, culture, human efforts, resources, and environment of specific regions. The significance of GIs has increased over the last few decades. GIs can build a strong reputation and thus become valuable commercial assets. As a result, they are frequently subject to misappropriation, counterfeiting, or forgery, and their protection, both national and international, is highly advantageous.

LEGAL FRAMEWORK

Geographical indications as a form of intellectual property can be traced back to the 1883 Paris Convention for the Protection of Industrial Property.

The Madrid Agreement for the Repression of False or Deceptive Indications of Origin on Goods, 1891, is another level of International protection for Geographical Indications (GIs). The Madrid Agreement went above and beyond the Paris Convention's level of protection for geographical indications.

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958, is another International Instrument for the protection of GIs. The Lisbon Agreement was open to any country that had signed the Paris Convention. This was the first agreement to define the term "appellation of origin," but it did not include the term "geographical indications."

In addition to these multilateral agreements, there also exist many bilateral agreements for the protection of Geographical Indications (GIs).

Geographical Indications is a new type of Intellectual property right that has been incorporated into the TRIPS Agreement. Because India is a party to the TRIPS Agreement, the Geographical Indications of Goods (Registration and Protection) Act, 1999 was passed in order to comply with TRIPS obligations, and it began providing protection to GI through sui generis legislation. The Act came into effect on September 15th, 2003. This Act is applicable throughout India. The need for the passing of this Act stems from the fact that, unless a GI is protected in the country of origin, other countries are under no obligation to extend reciprocal protection under Article 22 of the TRIPS Agreement. This will result in the generalization of GIs.

GEOGRAPHICAL INDICATION

"Geographical Indication" in the context of goods is defined as⁻³

³The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999), s. 2(e).

"An indication that identifies such goods as agricultural goods, natural goods, or manufactured goods as originating, or manufactured, in the territory of the country, or a region or locality in the territory, where a given quality, reputation, or other characteristic of such goods is essentially attributable to its geographical origin, and where such goods are manufactured goods one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."

The Act contains a definition of goods that differs from the definition given in the Sale of Goods Act of 1930. According to the definition, "Goods" include-⁴

"any agricultural, natural, or manufactured goods, or any goods of handicraft or industry, including food stuff."

Each of these items may belong to one or more classes of the Fourth Schedule-Classification of Goods-Name of the Classes; with 34 classes of GI of Goods Act of 1999. It should be noted that territorial, regional, or local flavor in such goods must be established in order to qualify for GI registration.⁵

SCOPE FOR PROTECTION OF AGRICULTURAL AND HORTICULTURAL PRODUCTS IN KASHMIR

Kashmir is an abode of eternal beauty, endowed with a fertile environment that facilitates the production of certain natural products with intrinsic and unique qualities. These products will have a high value in the international market because they are not produced with the same quality elsewhere. In the past, it was seen that some of the products that originated in India were being exploited by other countries all over the world. For example, Basmati Rice, which has aroused a lot of controversy in the past, is a clear example of wrongful exploitation of a well-known GI from India.

Protecting agricultural and horticultural products through GI is not only of commercial significance but also carries a social responsibility. Therefore, GI protection fosters a resource efficient economy.

The challenge now is to guide these GI-eligible agricultural and horticultural products to successful registration after identification. It will have a greater impact on their marketability and thus will provide sustenance to all, who can fall under the GI umbrella. The advantages of GI registration will trickle down to producers as well as to customers. Economic progress would be

⁴The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999),s. 2(f).

⁵Shefalika Ghosh Samaddar and Arun B Samaddar, "Komal Chaul- A potential candidate for Geographical Indication", 15 *JIPR* 214-219 (2010).

easy if the prospect of such identified products is determined ahead with proper involvement of the community.

A number of successful projects have been undertaken at the national level, but the methodologies remain project specific and only partially successful in reaping the benefits of community involvement in a broader sense. Furthermore, no research has been conducted in relation to the Kashmir Valley, which is a reservoir of diverse agricultural and horticultural products. So far as Jammu and Kashmir is concerned, it has seven GIs in handicrafts viz., Kashmir Pashmina, Kani Shawl, Sozani Craft, Walnut Wood Carving, PapierMachie, Khatamband, and Kashmiri Hand Knotted Carpet. However, regarding the registration of some famous agricultural and horticultural products only Saffron (*Crocus Sativus*)⁶ has recently been granted GI status. In terms of other similar products such as Apple, Walnut, Almond, Black Zeera, Zice, and so on, Jammu and Kashmir has yet to take any initiative to register them as GIs. These products with a unique blend of traditional and indigenous knowledge have achieved recognition throughout the world as 'Kashmiri brand'. These products deserve the legal protection as GIs. Thereafter, such protection will not only earn these products name and fame domestically but transnationally also. It will also help to boost the economy. Thus, it makes a good economic sense to protect them legally under the GI Act, 1999.

ECONOMIC VALUE OF AGRICULTURAL AND HORTICULTURAL PRODUCTS OF KASHMIR

Agriculture has been given top priority at both the national and local levels as this sector plays a strategic role in the process of economic development of Jammu and Kashmir and India, and on an average 70% of the population still relies on agriculture and its allied industries for their livelihood. At the national level, the agriculture sector currently contributes 13.7% of GDP, and locally, it contributes about 21.9%.⁷

Horticulture sector loomed as dominant industry in the J&K's economy. Due to its favorable environment and approximate yearly revenue of Rs. 10,000 crores, the Kashmir Valley makes up 90% of the total horticulture area in J&K. Since J&K has different agro-climatic and topographical advantages, it is famous for horticulture production all over India.⁸ Keeping this in view, the government of Jammu and Kashmir has designated horticulture as a focus area and is making a variety of efforts to promote it in light of this.

According to the Horticulture Department, Government of Jammu and Kashmir, 3.34 lakh hectares were reported as being used for major horticulture crops in 2020–21, with fresh fruits occupying 71% of that area. A total of 22.29 lakh metric tonnes of fruit were produced in 2020–21, including 19.60 lakh metric tonnes of fresh fruits and 2.68 lakh metric tonnes of dry fruit. According to the Directorate of Horticulture (Planning & Marketing, Government of Jammu and

⁶It is worth noting that Kashmir Saffron is a registered GI vide application no. 635.

⁷Digest of Statistics 2016-17, Chapter-IV-Agriculture, P. No. 126-127, Directorate of Economics & Statistics, Government of Jammu and Kashmir.

⁸Digest of Statistics 2020-21, Directorate of Economics & Statistics, Government of Jammu and Kashmir.

Kashmir, Srinagar), 11.88 lakh metric tonnes of fruit were exported from J&K outside of the state in 2020–21. The J&K Horticulture Department estimates that 33 lakh people are employed directly or indirectly by the state's fruit business, which supports roughly 7 lakh families and has scope for expansion.⁹

GEOGRAPHICAL INDICATIONS AND TRADITIONAL KNOWLEDGE

A geographical indication is a distinguishing sign used on goods that have a specific geographical origin and possess, according to Article 22(1) of the TRIPS Agreement, “qualities, reputation or characteristics that are essentially attributable to that place of origin.” Such geographical origins can refer to a “territory of a Member state, region or locality in that territory.”¹⁰

Some of the examples of GI's from developing countries include Basmati Rice, Thirupathi Laddu and Darjeeling Tea (India). Developed countries also have some popular GI's such as Kobe Beef (Japan), Champagne (France), and Parma ham (Italy).

There are various reasons why GI's are particularly relevant and considered to be suitable as an instrument for TK protection. Firstly, among the other IPRs, GI's are different as they are based on collective traditions.¹¹ Majority of the IPRs do not protect TK due to the notion within TRIPS Agreement that intellectual property rights are ‘private rights’.¹² GI's, however, apply to an unlimited number of people who live and manufacture goods in a specific location that enables a certain quality or reputation due to the unique climate or soil for example.¹³ GI's differ with other IPRs in that they reward reputation and goodwill that has been established by a group of producers over an extensive period of time.¹⁴ However, producers qualifying for GI protection do not have exclusive rights over it, as other forms of IPR would grant a proprietor. GIs usually have set requirements by an association of producers in the region, and if a producer fails to meet the described standards they would lose their rights to use the GI.¹⁵

The second reason GI's are considered suitable for the protection of TK is the fact that GI's are mostly associated with old knowledge. The majority of existing IPRs are not suitable for the protection of TK as they are intended to benefit namely those who create new and innovative goods. However, GI's do not grant rights for new inventions, and instead reward those who have

⁹Digest of Statistics 2020-21, Directorate of Economics & Statistics, Government of Jammu and Kashmir.

¹⁰C Bramley & J.F Kirsten, “Exploring the Economic Rationale for Protecting Geographical Indicators in Agriculture” (Agrekon 2007) 75.

¹¹Shivani Singhal, “Geographical Indications and Traditional Knowledge” Journal of Intellectual Property Law & Practice 2008) 733.

¹²Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994, Articles 41-61.

¹³Lori E. Simon, “Appellations of Origin: The Continuing Controversy” (Nw. J. Int'l L. & Bus. 1983-1984) 132.

¹⁴David R. Downes & Sarah A. Laird, “Innovative Mechanism for Sharing Benefits of Biodiversity and Related Knowledge: Case Studies on Geographical Indications and Trademarks” (UNCTAD Biotech Initiative, 1994) 4.

¹⁵Louis Lorvellec, “You've Got to Fight for Your Right to Party: A Response to Professor Jim Chen” (5 Minnesota Journal of Global Trade 1996) 65.

established traditional knowledge or methods arising from a geographical location.¹⁶ They do so by also allowing evolution of such TK, which is an essential aspect for indigenous and local communities (ILCs) to thrive in the constantly changing world.¹⁷ Production methods for example are allowed to change over time within the scope of protection granted by GI's, because GI's are not simply dependent on a particular method of production but recognize the reputation of particular communities without time limitations.

Thirdly, many other forms of IPRs such as the patent and copyright systems grant a proprietor rights for only a specific period of time. GI's, however, can last for as long as the group producing the goods upholds their collective tradition.¹⁸ This enables the prohibition of others from free-riding on their goodwill and reputation.

Another notable factor of GI's is that it is not possible to transfer the rights freely as they are not considered to be a 'private property'. Thus, a GI cannot be transferred, as patents can, from one right holder to another. This makes GI's very beneficial in terms of TK as the protection they grant is associated with the geographical area from which the method or product derives from as opposed to relating to a particular proprietor.

For these reasons, GI's have the potential of granting indigenous and local communities (ILCs) the ability to market their TK-based products without being stifled by others free-riding and globally mass-producing the products. Such counterfeiting activities would be prohibited by GI's and cases of bio-piracy within the market economy would significantly be reduced.¹⁹

So far as Kashmir is concerned, it is a reservoir of wide varieties of agricultural and horticultural products. The production of these goods is based on traditional knowledge, and registering them as GI's will significantly benefit Jammu and Kashmir's economy. Given that GI's are considered to be the intellectual property of the underprivileged. It is high time for developing nations like India to call the attention of the International community to the need to conserve the traditional knowledge. Producers in Kashmir apply their accumulated traditional knowledge, which has evolved generation after generation. These goods, produced with this distinctive fusion of traditional and indigenous knowledge, have come to be known as the "Kashmiri Brand" and as such, they deserve protection.

THREATS AND CHALLENGES FACING AGRICULTURAL AND HORTICULTURAL SECTORS IN KASHMIR

¹⁶ Thomas Cottier & Marion Panizzon, "Legal Perspectives on Traditional Knowledge: The Case for Intellectual Property Protection" (7 J.I.E.L. 2004).

¹⁷ *Supra* note 14.

¹⁸ *Ibid* at 269.

¹⁹ Keith Eugene Maskus & Jerome H. Reichman, "International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime" (Cambridge University Press 2005) 579.

Despite their economic and social significance, Kashmir's agricultural and horticultural sectors today confront a number of risks and obstacles that limit their ability to expand. Some of these problems include:

1. Product sustainability: One of the main issues is that the food must be able to withstand both home and foreign markets because, in the end, the market determines the worth of our produce. One of the important nut crops in Jammu and Kashmir, for instance, is Almond. Kashmiri Almonds lost market share as a result of the entrance of Californian Almonds (good quality and affordable) to the Indian and international markets. The only recourse left to the farmers is to clear the Almond trees.

The summer capital (Srinagar) alone lost 48% of its cropland, and other districts are in a similar situation. Kashmiri Walnut is experiencing the same problems.

2. Lack of Extension: This is another issue that prevents the effective application of cutting-edge scientific methods. Since only the farmer will ultimately embrace it, research and the launch of new schemes will be useless unless and until they reach the farmer's field.

3. Lack of Skilled Workers: The Jammu and Kashmir government established a new Department of Horticulture to promote this industry, but the department is short on educated and skilled workers.

4. Lack of marketing facilities: There is a significant loss of produce due to the lack of marketing facilities at the appropriate time. We are currently experiencing harvest losses of 30-35 percent.

5. Lack of finance: Banks and other financial institutions are unwilling to lend to growers and dealers of agricultural and horticultural products. Despite the fact that the Department of Horticulture and Agriculture has some schemes, they are mostly on paper.

LEGAL HURDLES: 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.

Against this backdrop, proof of origin is a mandatory criterion for registering GI's in India. This provision is borrowed from the EUs regulations on GI protection. What is cause for concern is not proof of origin as a criterion to register GI. but the focus on historical proof in the form of documentary evidence (such as gazettes, published documents, news articles, advertisement materials) to bring out the historical development of GI's 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 such mandate under the Agreement on TRIPS to do so.

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

Secondly, India's GI Act does not lay much emphasis on inspection and monitoring mechanisms for GI protection. The only two references thereto appear in the enabling rules in Rule 32(6) and Form GI-1. While Rule 32(6)(g) requires an applicant to list particulars of the inspection structure "if any" to regulate the use of the G.I. Form GI-1, Form GI-1 perfunctorily asks for the details of an "Inspection Body". Quality associated with geographical origin is the hallmark of a GI and the current legal framework evidently lacks teeth to ensure it. This perhaps explains why one has not heard of many GI success stories in India in general and Kashmir in particular.

CONCLUSION

Geographical Indications (GI) have gradually become a global phenomenon, with legal recognition at both the national and international levels. GIs are a unique kind of intellectual property asset. GIs have been accused of having "development-unfriendly" characteristics that would only benefit a few developed countries and a few emerging economies. However, the practical experience of millions of producers worldwide demonstrates how this unusual type of IPR plays a critical role in the development of poor communities.

Jammu and Kashmir is located in the Northern Himalayan region, stretching over 33-37° N latitude and 72-80° E longitude. Significant changes have occurred in the Indian agriculture sector in recent years, and the idea that agricultural products, like other products, can be branded is gaining traction among academics and practitioners. Agribusiness commodities, which previously did not have many incentives to pursue the search for differentiation, must now develop branding strategies in order to establish a prominent position in the eyes of consumers, and Geographical Indication is one of the branding tools that can be used to achieve differentiation. The Geographical Indications of Goods (Registration and Protection) Act, 1999, was enacted in India as a legislative measure. In recent years, G.I.s have proven to be very successful for many states across the country. In India, notable examples include Basmati Rice, Darjeeling Tea, and Kangra Tea, etc.

Jammu and Kashmir which has a diverse range of agricultural products, should take some steps, and some well-known agricultural and horticultural products that should be registered as Geographical Indications as soon as possible are Black Zeera, Apple, Almond, and Walnut. These products must be branded as they will allow producers to gain market recognition and differentiate their products from others. GI can serve as a branding tool for these products.