WHY THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDIA NEEDS AN OVERHAUL

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Abstract

In a land as rich in cultural arts and traditional knowledge as India, Geographical Indications (GIs) are an extremely important intellectual property right. The Geographical Indications of Goods (Registration and Protection) Act was passed accordingly, to protect the interests of the producers, and to bring economic prosperity. However, despite the passing of the Act in 1999, there have been several issues with GI protection in India. Low awareness among producers, rampant violations, and lack of proper marketing and promotion are but some of the problems that plague Indian GIs. These problems have eclipsed the multifarious benefits that GI protection offers to both producers and consumers; causing severe hardship to the local vendors whose livelihood is dependent on these products and frustrating the very purpose of the Act. This paper begins by examining the concept of GIs, along with

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history of GI protection in India, which examines how this intellectual property right evolved. It further goes on to explore the special importance of GIs in the Indian context, with a focus on how producers, rural communities and consumers stand to benefit from GI protection. The paper then discusses the various problems that riddle the Indian GI framework. While analysing the post-registration issues that arise with Indian GIs, the authors draw a comparison with thoroughly marketed goods such as Parma Ham, to highlight what lessons can be learnt from the branding and marketing thereof. Lastly, the authors discuss solutions that could help overcome the obstacles in the path of successful GI implementation in India.

I. INTRODUCTION

Every culture is characterised by products which are created and developed as a result of the region the people reside in, and which are carried forward through the generations. These products are unique to their region of origin; they derive quality and other attributes therefrom. They are a goldmine of commercial potential; something other States and jurisdictions have realised and tapped into for decades now. India, being a home to many such products, needs to accord adequate significance and protection to these products too. This paper seeks to explore the problems with the current legal framework for the protection of Geographical Indications, and the implementation thereof. In Part I, the authors discuss the concept of Geographical Indications, how they evolved in India, and what the procedure is to obtain registration of them. In Part II, the authors
explain the importance of Geographical Indications in the Indian context. The authors delve into a discussion of the problems plaguing the Indian Geographical Indications framework in Part III, and analyse solutions for these issues in Part IV of the paper, along with concluding thoughts.

II. AN INTRODUCTION TO GEOGRAPHICAL INDICATIONS

A Geographical Indication (“GI”) is an indication which identifies a good in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. India has a very strong cultural identity, with a rich history of indigenous goods having special characteristics. By providing GIs, the law attempts to safeguard a number of products which are locally produced from being marketed by manufacturers who are not from that geographical area. In furtherance of this objective, The Geographical Indications of Goods (Registration and Protection) Act, 1999 (the “Act”) was passed. The statement of objects of the Act states that the legislation was passed to protect the interests of producers of goods, bring economic prosperity to them, promote goods bearing Indian geographical indications in the export market and lastly, protect consumers from deception.\(^1\) Another reason to pass the Act can be seen on examination of obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights

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Unless a geographical indication is protected in the country of its origin, there is no obligation for other countries to extend reciprocal protection under the TRIPS Agreement. It has been more than 14 years since the legislation came into force and most of these objectives are far from being achieved.

A. The Origin and Evolution of Geographical Indications in India

Till the enactment of the Act, there was no separate law in India offering specific protection to GIs. They were protected using common law principles. However, there were three alternative ways in which the then-existing legal system of the country could have been utilized for preventing misuse of GI. The first way was in the field of consumer protection through Section 2(1)(r) of the Consumer Protection Act, 1986 and Sections 36A to 36E of the Monopolies and Restrictive Trade Practices Act, 1969. As per these provisions, unfair trade practices had to be proved to obtain relief. The second way was through ‘passing off’ action in courts. Under this, the plaintiff had to establish that there is goodwill attached to the goods supplied by him on which the GI is regularly used; and that the defendant misinterprets to the public that the goods offered by him originate from the plaintiff. Therefore, to prevent the unauthorized use of a GI, a successful action for passing off had to be shown. The last alternative to protect GI before the Act was in the form of

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4Singh, supra note 2, at 197.
7Singh, supra note 2, at 198.
8Id. at 199.
9Id.
10Id.
Certification Trade Mark ("CTM") protection.\textsuperscript{11} Under Section 2(e) of the Trade Marks Act 1999, CTM could be adapted to serve the functions of the modern GI and the CTM system was capable of being used for the protection of names of geographical repute.\textsuperscript{12} The most common geographical name protected under the CTM system, prior to the Act, was "Darjeeling tea."\textsuperscript{13} With the TRIPS Agreement coming into force in the year 1995, India was faced with an accompanying obligation to give formal protection to GIs.\textsuperscript{14} These obligations arose as a result of the negotiations prior to the signing of the TRIPS Agreement, which brought this particular species of intellectual property to the fore. This was mostly due to the negotiating power of the EU, where GIs had already been accorded considerable significance.\textsuperscript{15} Thus, there was a gradual discontinuation of previous methods of protection with the passing of the Act in 1996.

\textbf{B. The process of obtaining a GI in India}

The process to get GI registered in India first involves filing an application before Geographical Indications Registry which has been established by the Central Government, with all–India jurisdiction, at Chennai.\textsuperscript{16} The party filing it must necessarily represent the interest of the producers; and should mention the special characteristics of the

\textsuperscript{11}\textit{Id.} at 201.
\textsuperscript{14}Srivastava, GI Framework, \textit{supra} note 9.
product in the application, along with other particulars.\textsuperscript{17} The Examiner will then examine and scrutinise the application. Any deficiencies can be remedied by the applicant within a month. Further, if the Registrar has any objections to the application, a show-cause notice will be served and the matter will be heard and decided accordingly. Once the application is accepted, it will be published in the GI Journal. Any person objecting to the same can file a notice of opposition within 3 months of the publication. The applicant can respond to this within 2 months; and if he fails to do so, he will be deemed to have abandoned his application. The parties will then lead their respective evidences, and the matter will be adjudicated. When a GI is finally accepted, it will be registered.

\section*{III. The Role and Importance of GIs in the Indian Context}

We need only to reflect upon our daily conversations to see the sheer importance of GIs in India. References to “Kolhapuri Chappals”, “Mysore Sandal soap”, or “Darjeeling Tea” are liberally peppered in our day-to-day conversations,\textsuperscript{18} and we often fail to notice that all of these are actually GIs. In fact, almost everything that we grow, make or produce in India is linked to a particular region.\textsuperscript{19} Each region has developed art and traditional products specifically moulded to suit their specific clime and topography; particularly due to the strong link shared between the people and their land. What this signifies is that each region creates products that are intrinsically linked to their

\textsuperscript{17}The Registration Process, IP INDIA, http://www.ipindia.nic.in/the-registration-process-gi.htm.
\textsuperscript{19}Id.
geographical origin; or, in other words, each region creates goods capable of being recognised as GIs.

The fundamental economic rationale behind the protection of GIs lies in the fact that place of origin can be used as a marker of the quality of goods. The resources of a region can be beneficially utilised in the origin-labelled product, as quality attributes. Studies have shown that globally, consumers are increasingly placing value on products which are associated with a certain place or means of production. GIs become significant in this regard, by providing recognition and legitimacy to producers making and marketing goods linked to their geographical origin; thus “institutionalising the reputation” of goods being protected. GIs also give indigenous producers the opportunity to operate in a niche market of specialised goods based on differentiation of products to earn higher profits, and use the geographical origin of the goods as a means to sell them better. This helps to revitalise lagging markets of traditional goods and save such industries from dying out in a country like India. Further, GIs are an effective marketing tool, as they are brands in themselves. Therefore, any product with the label of a GI assures a high quality to its

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consumer; and this is sufficient to attract customers willing to pay for the same.

The West has long been fascinated by Indian goods, with trade for silk, spices, ivory and other goods from India flourishing since ancient times. Traders flocked to Indian shores for the rich products they offered. India can tap into this ready market for traditional goods. Adequate protection under GIs could help boost exports, consequentially hiking foreign exchange earnings; whilst simultaneously protecting the exclusiveness, heritage and traditional skills of those making such products.

GIs, being collective rights, are best suited to protect the interests of communities which have developed unique goods. These rights protect these goods from being hijacked by corporations; and reward the true owners and creators of such products. They also promote the evolution of tradition and culture. Small local producers can use them to enhance their reputations, and compete more effectively against large corporations.

GIs can also act as effective tools of rural development. Many, if not most, of the goods which are eligible for GI protection originate from villages. Unique and typical products are often developed in these villages and rural communities based on their culture and circumstances, as a result of the interaction of local knowledge and

24Klaus K. Klostermaier, A Survey of Hinduism 456 (3 ed.).
environmental conditions.\textsuperscript{28} As stated above, GIs can be used to give small local producers a way to compete against corporations. They can also publicise the region that GIs use for the names.\textsuperscript{29} GIs further help to protect indigenous knowledge, by keeping it in the public domain, and granting rights to the producers in perpetuity;\textsuperscript{30} which helps to not only protect the traditional knowledge but also make sure it is not lost over time. An effective GI mechanism can not only empower a single producer, but also entire communities which produce goods unique to a geographical region.\textsuperscript{31} GIs foster local production and generate employment in these areas. Further, they may even build up ancillary industries like tourism, which can help in the socio-economic development of the area; by generating sufficient interest in the product and the region it is linked to.\textsuperscript{32}

GIs can also be of a huge benefit to the consumer. Sellers often dupe consumers into buying inauthentic goods by misrepresenting that the goods come from a particular region. These “piggyback riders”\textsuperscript{33} have a dual detrimental effect- firstly, that of cheating innocent consumers; and secondly, by devaluing the authentic product by passing off fake goods of poorer quality as the real ones.\textsuperscript{34} GI protection to the goods will ensure that only producers who belong to the geographic region

\textsuperscript{28}World Trade Organization, ‘Promoting Agricultural Competitiveness through Local Know-How’ Workshop on Geographical Indications for Middle Eastern and Northern African Agri-Food Products, \textit{WORLD BANK REPORT} (June 2004).
\textsuperscript{29}\textit{Id}. at 266.
\textsuperscript{33}Sridevan, \textit{ supra} note 22.
\textsuperscript{34}\textit{Id}.
from where the unique good originates can use the particular name to sell the goods; thus protecting consumers from being cheated by unscrupulous sellers. This would also ensure that the value of the original good is not damaged.

Thus, it can be seen that an effective GI mechanism serves multifarious goals; producer protection, fair competition, foreign trade, rural development, and consumer protection, to name a few. All of these are goals are of especial importance in a developing country like India.

IV. THE PROBLEMS PLAGUING THE GI FRAMEWORK IN INDIA

As can be seen from the above discussion, GIs have emerged as an important instrument of protecting the market for “quality, reputation and other character of goods essentially attributable to their geographical origin.”\(^\text{35}\) While the TRIPS Agreement and the GI Act have tried to fulfil this objective, there exist several problems which have limited their success, and have thus failed to effectuate their purpose.

A. Problems with Foreign Registration

For an Indian GI to be protected in another country, it needs to go through the full legal process of that particular country, since recognition under the GI Act does not provide worldwide protection.\(^\text{36}\) Therefore, every technical and legal obligation in each country needs to be studied and complied with before applying for GI recognition there. The task of acquiring legal armour in various

\(^{35}\text{Singh, supra note 2, at 338.}\)

countries as per their respective legal and technical frameworks is an extremely daunting one. This is even more so because of the significant divergences in modes of protection of GIs from country to country.\(^{37}\)

Further, the difficulty with protecting GIs in a foreign country does not stop with completion of local registration. Once the GI is registered in a foreign country, exorbitant expenses are involved in appointing a monitoring agency in each country to get information on misappropriation.\(^{38}\) Additionally, huge financial resources are needed for fighting legal battles in foreign lands.\(^{39}\) In such a situation, the TRIPS Agreement does not help much as it leaves it up to the member countries to determine the appropriate method of implementing the provisions of the Agreement within their own legal framework.\(^{40}\) As a result, the process to register and protect an Indian GI in a foreign country is a very long, technical and formidable process involving huge expenses.

**B. Lack of Awareness**

While India has no dearth of goods eligible for GI protection; the number of goods actually registered is startlingly low. Knowledge of the very existence of GIs has not penetrated the various rural areas where the producers of these goods reside and function; making applications of registrations from these producers a moot point. Chinnaraja G. Naidu, the Assistant Registrar of Trade Marks & GI Registry, has voiced concerns about the lack of registrations due to


\(^{38}\)Singh, *supra* note 2.

\(^{39}\)Id.

\(^{40}\)Das (2010), *supra* note 41.
lack of awareness among local producers of the benefit of GIs. Due to this, there is an abysmally low number of registered GIs in Punjab: while the area is teeming with products capable of receiving GI protection, the number of registered GIs is just one. Another instance is of goods such as Chilika curd, which is a traditional dairy product made in Odisha that has all the requirements to qualify for GI protection, but has not been registered due to lack of awareness among the producers. This phenomenon is leading to inefficiencies in the GI system in India: for GIs to succeed, producers need to be aware of the protections they can avail.

C. Excessive Reliance on Documentary Proof for Registration

The law as it exists leans heavily on documentary evidence to grant GIs: the process to obtain and register a GI requires the submission of a large amount of documentary proof. This is primarily to discourage frivolous applications. While well-intentioned, the excessive reliance on documentary proof for registration of a GI can lead to hurdles in practical application. Documentary proof is not always easy to obtain, especially in areas where history is transferred from generation to generation by word of mouth. One such example is of Judima wine in Assam. The Dima tribe which has been making it

over generations has no documentary proof to support its claims, and has therefore been refused a GI tag. Another example is the refusal to grant GI protection to a variety of Hyderabadi Biriyanı due to lack of documentary evidence. Thus the stringency in requirement of documentary evidence becomes a problem, especially in several tribal societies, and in cases of passing of traditional knowledge, where written history or documentary evidence is nearly impossible to find. This needs to change to allow adequate protection over such goods. The authors will, in a later section of this paper, analyse potential ways to resolve this problem.

D. The ‘nationalisation’ of GIs

A large percentage of applications for GIs can be seen to be filed by the State or Central governments through various authorities. 64% of the first 100 registered GIs were filed and registered by various government bodies. Agricultural & Processed Food Products Export Development Authority (‘APEDA’) is the holder of the GI for Basmati rice, and even Universities have been granted GI rights, as in case of ‘Wayanad Jeerakasala Rice’, and ‘Tangaliya Shawl’.

46Id.
The Act is silent as to whether a government can be the registered GI-holder. All the Act mandates is that there must be an “association of persons or producers or any organization or authority established by or under any law”; which represents the interests of the producers.\(^{50}\) This does not give clarity as to whether a government body is indeed allowed to hold a GI right.

The next question that arises is whether a government body is an appropriate body to hold a GI right. The justification of the governments in this regard is also untenable. While the government may claim that it represents the interests of all producers, this does not always hold true; especially in cases where the government is involved in the process of production and marketing.\(^{51}\) There is a likelihood of prejudice against producers who are not linked with the government. Further, the involvement of the bureaucracy brings with it the problems that plague the system: the corruption in the Indian system is no secret. Such a situation would defeat the very purpose for which the GI is granted; i.e., the benefit of the producer. The government may claim that it will protect the interest of every producer; whether that promise will be kept cannot be said for certain.

\textit{E. Lack of benefit to Local Vendors}

One of the primary purposes for which GIs have been created is for the protection of local vendors. Though GIs have been implemented to protect and benefit the local vendors, this purpose has not been achieved in reality: while rights have been granted, the benefits have not always been enjoyed by the local vendors. This could be due to a plethora of reasons: piggyback riders in the market who sell inauthentic goods to consumers, thus robbing the authentic sellers of their consumer base; lack of organisation and awareness in these local producers; lack of proper implementation of the GIs, etc. The position


\(^{51}\)Vinayan, \textit{supra} note 4.
of the local vendor is further weakened due to the problems that plague any collective right: in case of lack of unity in the group, the entire group suffers. Further, firms with a better bargaining power may end up making a disproportionate amount of benefit from the GI protection; leaving the smaller producers high and dry.\textsuperscript{52} A field study conducted by The Energy and Resources Institute ("\textit{TERI}") showed that in cases of several GI protected products, such as Malabar Pepper and Vazhakulam Pineapple, the farmers were not reaping benefits of the GI tag.\textsuperscript{53}

This lack of benefit to local vendors runs contrary to one of the primary reasons for which GIs exist in the first place.

\textit{F. Enforcement in India and Abroad: Violations of GI}

Violations of GI run rampant, both within and outside the boundaries of India. The famous Banarasi silk is being copied by weavers in Surat, who use power-looms to make cheaper imitations of the traditional silk.\textsuperscript{54} Traders also import Chinese silk, and sell it as Banarasi silk in Indian markets.\textsuperscript{55} This has proved ruinous for the weavers of the original Banaras silk, forcing them to search for new jobs. This has also occurred in the case of Pashmina shawls as well, with power-loom made substitutes driving the producers of the


authentic Pashmina out of business. In both the above examples, the registered GI holders, which are private entities, have done nothing to enforce their rights. In fact, even in instances where the Government is the registered GI holder, no active measure towards enforcement has been taken. This can be seen in the case of Muga silk; where there has been a steady stream of products which are not pure Muga but which are passed off as the same. These are but a few instances of blatant violation of GI within India, with sellers luring consumers in with the name of the geographical area but selling them inauthentic and cheap products. Thus, there arises a crucial need for all registered GI holders, government and private alike, to actively enforce their GIs; as not doing so would frustrate the very purpose of registering a GI.

Protecting GIs in foreign jurisdictions is an even tougher task due to the vast expense it entails. Violations can be seen abroad as well. Producers in Bangladesh have been producing Banarasi silk in gross violation of the Indian GI tag, which has compounded the struggles of the weavers of the authentic silk. Even though the Government has taken several initiatives towards protecting “Darjeeling” Tea India and abroad; the statistics show that violations are still taking place: around 40 million kg of tea per annum are being sold globally as “Darjeeling tea”, whereas the actual production of authentic Darjeeling tea is around 9 million kg only. Another prominent case of violation occurred when America granted a broad basmati patent right to Ricetec, an American company. This was followed by a

57Sridevan, supra note 22.
59Das (2010), supra note 41.
protest; as America was infringing upon the rights of Basmati, which vested in India. This grant of patent right was condemned as biopiracy and as being grossly violative of India’s rights. Eventually, the dispute was resolved with a narrower right being given to Ricetec. All these instances prove that violations of GIs are a common phenomenon. However, all hope is not lost and effective steps can help curb these violations; as was done in the Basmati case.

**G. Need for a Post Registration Mechanism: Branding, Inspection and Promotion**

A major problem with the Indian GI scenario as it exists today is the government attitude towards GIs. The government merely seeks to register GIs, thus promoting a system of “Vanity GIs”; since there exists no proper post-registration system in place. While there have been efforts to promote registration of GIs, little is being done afterward to enforce the GI and then promote the goods. The problem with this is that if the follow-up mechanism to GI registration is weak, it renders the protection offered to producers and consumers ineffective.

There are 330 registered GIs in India, belonging to a number of categories such as agriculture, handicraft, foodstuff and

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manufactured. Out of these, there are only a handful of GIs which are famous and well-known to people, while other lesser-known GIs fail to benefit from the tag and silently suffer. Well-recognised GIs tend to have a ready market and high demand. In contrast, lesser known GIs suffer due to insufficient demand for these products, because of various reasons such as lack of promotion, marketing, and awareness. This can be seen by contrasting celebrated GIs in India such as Darjeeling Tea and Basmati Rice, which India has managed to successfully protect internationally with lesser known ones such as Tulaipanji Rice (West Bengal) or Guledgudd Khana (Karnataka), which are not known domestically, let alone abroad. Some of the popular GIs, such as Malabar Pepper and Mysore Silk, were well-known even historically, having gained recognition since colonial times. This high demand further increases the economic value of such products as it is more profitable for a person to market and sell them. On the flip side, GIs such as Warangal Dhurries are in desperate need of the same amount of popularity. There emerges, therefore, a need for an effective post-registration mechanism to popularise the GIs which are still hidden in the shadows of obscurity.

Quality is an important consideration for GI goods, as consumers expect these goods to conform to a high level of quality. In fact, it is the quality of the good that contributes to its reputation. However, the problem in the Indian context is that for most GI protected goods, there is no proper mechanism for quality control. There is no monitoring or supervisory body to ensure that the GI registered goods actually adhere to the quality consumers expect to receive. Further, the enabling Rules of the Act also give little emphasis on an inspection structure for GI. Rule 32(6)(g) asks for an applicant to list

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65 For a list of registered GIs in India as of January 2019, see, Registration Details of Geographical Indications, IP INDIA, http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/registered_GI_list.pdf.
67 Vinayan, supra note 4.
particulars of the inspection structure, “if any”, to regulate the use of the GI. This makes it clear that it is not even mandatory for the inspection structure to exist. It is impossible to maintain the supply chain integrity of the product and consequently its quality, without a proper inspection system.  

Marketing, branding and promotion are vital tools to sell any product in the market. One of the major reasons behind the registration of a good as a GI is to promote sales of that good due to the preference of consumers for GI-branded products. A good branding system will help producers to make good on the commercial potential of their products; and help them differentiate their products. An important step in this regard would be developing a common logo for GI protected goods in India; as has been done by the EU. This would reassure consumers as to the authenticity of a product. In sharp contrast with the aggressive marketing strategies employed by various countries to promote their GIs, however, there is little being done in India to market our GIs; thus leading to an enormous waste in potential.

H. Lessons from Parma Ham

India can take a cue on how to market GIs successfully from the marketing of Parma Ham. Parma Ham was awarded the Protected Designation of Origin (“PDO”) status in 1996, and was one of the first meats so receive this protection. The Consorzio del Prosciutto di Parma, a Consortium of producers of Parma Ham which was set up in 1963, has been the body in charge with branding and promoting the

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PDO. The Consortium oversees the management of quality, protecting of the PDO status, promotion of the brand, and also provides support to associated companies. Further, there are stringent quality requirements which the ham needs to meet, starting from the very breed of pig which is used for the meat; to guidelines on production and inspection; and quality checks. Whether the various stages of quality checks have been met or not is easily traceable; the passing of each stage is visible through seals, brands and tattoos marked on the skin of the pig. The final marker of quality is the branding of the Ducal crown, which is stamped under strict control of inspectors, and is conclusive guarantee of the quality of the meat. The Consortium has also worked with Brand Dialogue, a marketing and design agency, to market Parma Ham in the UK.

Moreover, the Consortium has also worked to protect the Parma brand from infringements, and ended up winning a legal battle against Asda Stores, which sold ham boned, but not sliced, by a producer belonging to the Consortium. The European Court of Justice decided in favour of the Consortium, holding that in this case, slicing and packaging of the ham were important considerations for its quality; and thus the slicing and packaging of ham outside the protected region would run contrary to its PDO.

\[\text{71} \text{Consortium, Prosciutto di Parma, } \text{https://www.prosciuttodiparma.com/en_UK/consortium.}\]
\[\text{72} \text{Tasks and Functions, Prosciutto di Parma, } \text{https://www.prosciuttodiparma.com/en_UK/consortium/tasks-functions.}\]
\[\text{74} \text{Guarantees, Prosciutto di Parma, } \text{https://www.prosciuttodiparma.com/en_UK/prosciutto/guarantees.}\]
\[\text{75} \text{Id.}\]
\[\text{76} \text{Clients-Prosciutto di Parma, Dialogue Agency, } \text{http://dialogueagency.com/clients/consorzio-del-prosciutto-di-parma/}.\]
\[\text{77} \text{Consorzio del Prosciutto di Parma and Salumificio S. Rita v. Asda Stores Ltd and Hygrade Foods Ltd., EUECJ C-108/01 [2003] ECLI:EU:C:2003:296, ¶93, 97, operative part ¶2.}\]
\[\text{78} \text{Id.}\]
The Consortium has also taken great efforts to ensure consumers can have information about Parma Ham at their fingertips. Its official website provides easily accessible information as to the quality checks and marks for Prosciutto di Parma; and also has information as to region-specific producers and distributors of Parma Ham.\(^79\) Another great initiative to attract customers and stimulate interest in Parma Ham is the Festival del Prosciutto de Parma, which is held annually in and around the Parma region, and involves several events which visitors can enjoy.\(^80\) The twentieth edition of the Festival was held in September, 2017.

All of these are initiatives which India can learn from in marketing of our GI products. Stringent quality checks, uniform logos, engaging and informative websites and events to stimulate consumer interest can go a long way in promoting GIs and establishing a brand name for them. These strategies have certainly worked in the case of Parma Ham, with valuable lessons to be learned from the enormous global reach by a handful of small producers in rural Italy.\(^81\)

### V. FILLING THE GAPS: WHAT CAN BE DONE TO SOLVE THE PROBLEMS

It is important to remember that the Act in India is still at a very nascent stage. There are bound to be issues and hurdles in the

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implementation. However, steps can be taken to overcome these problems.

Awareness needs to be increased in the grass root level, and the need for this cannot be overstated. The Government has been conducting awareness camps in areas where goods which can be protected by GIs are produced. The reach of these camps needs to be broadened, and should permeate rural areas where there is no knowledge of GIs. As it is important for local producers to understand the significance of GIs, vernacular language should be used to facilitate more effective communication. Further, producers should be made aware not only of the protections that GI registration offers; but also how to go about maintaining the GI protection and protecting themselves from infringements.

Finding an immediate solution to the nationalisation of GIs is difficult. While it is true that the increasing number of GI registrations in the name of the government could pose problems, the truth remains that in the current scenario, it is difficult to do away with it altogether. However, steps can be taken to mitigate the potential negative effects of this necessary evil. First, greater clarity needs to be brought in the provisions of the Act in terms of who can be an appropriate GI holder, especially with regard to the position of government bodies. This could arise as a result of judicial decisions, or an amendment in the legislation. Second, absolute transparency should be maintained in the operation of such government GI holders to ensure that no corruption or malpractice takes place. Transparency in decision-making and operation would also mitigate the issue of preferential treatment by the government and ensure that the ultimate benefit of GI registration accrues to the actual producers. There is no easy solution to the

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problems surrounding the foreign registration of GIs, either. While it is true that the present framework is cumbersome and painstaking, there exist no feasible alternatives for Indian GI holders. India not being a contracting party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration,83 the reciprocal protection that arises between the Contracting Parties of the same cannot be availed by Indian GI holders. Thus, each holder must individually work to register their own GIs in other countries.

As for the problem of excessive reliance on documentary evidence; a solution would be to consider testimonial proof that a particular GI has existed over generations while granting a GI. Testimonies of three successive generations can be recorded and verified to prove that the custom has indeed existed over time. Further, common knowledge of the tradition can be used to test the veracity of claims raised. This is something that needs to be decided from case to case; with adequate examination of the legitimacy of claims.

While emphasis should certainly be given to increasing registrations for GIs, sufficient attention must also be paid to post-registration mechanisms. Sufficient quality checks must exist for GI goods, especially ones which are being exported. These inspection measures and quality checking mechanisms should be envisaged at the pre-registration stage itself, so that each GI, once registered, has adequate mechanisms to ensure quality is not compromised. This can be done by associations of producers, as has been done in the case of Parma Ham. Darjeeling Tea is an important example in this regard; as the Tea Board has a well-established quality checking and certification

mechanism in place.\textsuperscript{84} Similarly, producers can, with the assistance of the government if necessary, develop such measures.

Organisation among the producers is imperative to ensure that there is a smooth mechanism in place to inspect and promote the goods. As GIs are collective rights, it is extremely important for producers to cooperate with each other. A strong organisation of producers of a certain GI protected good could go a long way in protecting and promoting the GI, and helping the local vendors flourish. Adequate marketing strategy must be developed. Some GIs have developed logos for themselves, to ensure product differentiation. Muga silk,\textsuperscript{85} Darjeeling Tea,\textsuperscript{86} Odisha Pattachitra,\textsuperscript{87} and Kota Doria,\textsuperscript{88} are some of the GI protected goods which have developed their own logos. Other producers of GI goods should also develop unique and distinctive logos for the product and get them registered. These logos should be prominently displayed on the goods as well. This would help them differentiate authentic goods more easily and help combat the spurious goods that are being sold. With e-commerce gaining more importance in modern business, it is important for producers to make authentic GI products available online as well, as has been done in the case of Chanderi Silks.\textsuperscript{89} This will broaden the reach and consumer base that the goods enjoy.

Another strategy which can be adopted is to use the stories, myths and legends of an area to market products. There is no lack of folklore and

\textsuperscript{86}Darjeeling Tea, supra note 88.
\textsuperscript{87}Odisha Patachitra Set for Global Recognition with Launch of GI Logo, ODISHAN (Mar. 20, 2013), http://odishan.com/3764.
\textsuperscript{88}Dr. Ruppal Sharma & Shraddha Kulhari, Marketing of GI Products: Unlocking their Commercial Potential, CENTRE FOR WTO STUDIES, IIFT, http://wtocentre.iift.ac.in/Papers/Marketing%20of%20GI%20Products%20Unlocking%20their%20Commercial%20Potential.pdf.
\textsuperscript{89}CHANDERIYAAN, https://www.chanderiyaan.net/about-us.
mythology that can be used to better market these goods. Promotional events can also be organised to capture consumer interest and give them a view of the hard work that goes into producing these products. One such instance was the Raghurajpur International Arts and Crafts Exchange in 2012, which invited artists from the world over to the small village which is the home for the GI protected Odisha Pattachitra paintings. These events can boost earnings through tourism, and promote GI goods as well.

In fact, the government can take measures to integrate GIs with tourism. India is a tapestry of rich cultural heritage, and attracts millions of tourists every year. These tourists are fascinated by local handlooms, arts and crafts. Incorporating GIs into the advertisements of a tourist destination would attract the attention of tourists to these products; thus firstly, increasing sales, and secondly, raising awareness and interest in them. By integrating GIs and tourism; both industries would become symbiotic: each would benefit the other. Tourists can partake of the GI protected products; and these regions would flourish due to the influx of tourists. This would further help to popularise lesser-known GIs.

Steps must also be taken to check infringements and violations of GI rights. Producer associations can do this by closely monitoring markets inauthentic products. They can also hire third party watchdog agencies to perform this function. Swift legal action should be taken against any instances of passing off of goods. We

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91 Darjeeling Tea has done the same by hiring CompuMark to monitor violations in India and abroad, see S.C. Srivastava, Protecting the Geographical Indication for Darjeeling Tea, WTO Case Studies, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm.
must take cues from the fierce guarding of the Champagne brand, and of Scottish Whisky, in this regard.

Another concern that needs to be addressed is that all of these initiatives require funding. The government can provide financial assistance to registered GI holders in the form of subsidised loans, financial aid schemes, etc. While it is expensive to market, inspect and promote a GI, doing so will help producers reap profits and establish a brand name for themselves. Government assistance in doing this would be invaluable for producers.

VI. CONCLUSION

While the problems Indian GIs face are many, all is not gloom and doom. GIs in India are still at a developing stage, and the goods to be protected are quite numerous. The issues faced are remediable: what is needed is for producers and the government to step up and take action to fix them. There is a lot the government can do to in this regard: awareness programmes, providing financial assistance to producers through loans and subsidies, promoting and marketing GIs, ensuring proper enforcement of GIs both in India and abroad; to name a few. Producers, too, must organise themselves into effective groups which can work towards protecting, enforcing and promoting their GIs. The costs that will be incurred in doing so will be quite considerable. However, stakeholders stand to lose a lot more if they fail to protect their rights- every day, producers lose a staggering amount of sales and profit thanks to violations of GIs. The costs are justified and even necessary to help the producers harness the economic potential in their products, and profit from them. India

92There have been several cases where the Scotch Whisky Association has taken legal action against GI violations. For the cases in India alone, see Scotch Whisky Association v. Golden Bottling Limited, (2006) 129 DLT 423; Khoday Distilleries Ltd. v. Scotch Whisky Assn. & Ors., (2008) 10 SCC 723.
needs to wake up and realise the importance of a proper enforcement mechanism for GIs. It is high time that effective steps are taken to fill in the gaps in the system.