

GEOGRAPHICAL INDICATION AND REGISTRATION FOR IT IN UTTAR PRADESH, INDIA: PRESENT AND FUTURE POTENTIAL

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ABSTRACT

Geographical Indication (GI) of Goods and Services is an indication, in the form of name and or sign, used on the goods that have a specific geographical origin and possess qualities or a reputation that are due to the place of origin. In order to function as a GI, a sign must identify a product as originating in a given place. After the GI became effective, Darjeeling Tea became the first product to get GI tag in 2004. Ever since, more than 289 GI tags have been issued in India for products related to agriculture, out of which only 24 have been issued for products produced in Uttar Pradesh. Realising that GI is a powerful tool to protect the ownership right on the natural resources, natural product and by-products, and manufactured goods based on plants and animals, its importance can't be overemphasised. Uttar Pradesh is not only centre of biodiversity but also centre of skilful artisans and product developers. This more awareness needs to be generated and government help rendered at every level.

No: of Tables: 2

No: of Figures: 4

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Definition

Geographical Indication of Goods (GI), as the name implies, is an indication (Addor and Grazioli, 2002; Ahuja, 2004; Anon. 2009; Das, 2006; Dattawadkar and Mohan, 2012; GI Jour., 2017; Nanda and Barpujari, 2012; WIPO, 2014), in the form of name and or sign, used on the goods that have a specific geographical origin and possess qualities or a reputation that are due to the place of 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 (AIACA, 2011).

Geographical Indication for Products

GI can be obtained for seed and seed based entities, products made out of plants and handicrafts. Seed or planting material is basic to all agricultural production. Seed costs minimum in total cost of crop production but has maximum impact. Having reaped the benefit through the seeds of green revolution varieties, farmers were quick to realize the importance of good seeds of new and better varieties of crops. For such superior seeds, farmers were even more willing to pay a higher price. Seed companies and

technology developers saw this as an opportunity to convert plant varieties and important plant genes as profit – making products. Global strategy, pesticides and seed companies merged to consolidate capital and technology to dominate the market. In various countries the need to conserve biodiversity, farm level variation, giving credit to farmers for their traditional crop varieties, folk varieties, farmers varieties, access to benefit sharing, extending consumer assurance by way of geographic indications, appellation of origin, traditional knowledge etc were attempted to be protected. Global commodity trade is now dominated by several such new issues, which in India are now understood and applied. Other aspect of GI in agriculture is related to plant-based products or by-products. Plant-based products could be raw material for production or its processing or the preparation. After the GI became effective on 15th September 2003, Darjeeling Tea (Datta, 2009) became the first GI-tagged product in 2004 in India (Comm. Intellect. Property Right, 2004). After that landmark (GI Jour 2017), many GI-labelled agricultural products have been added (Table 1) in India.

Legal Side of GI:

The Indian Parliament enacted in 1999 'The Geographical Indications (GI) of Goods (Regulation and Protection) Act' (Gaguli,

2009; GI Jour. 2017) for registration and better protection in relation to goods. This Act came into effect on 15th September 2003. Under Section 1(e) it is defined that 'Geographical Indication' in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in the territory of a country or a region or locality in that territory, where a given quality reputation or other characteristic of such good is essentially attributed to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality as the case may be. The focus of the Act is on quality reputation or other characteristic of such goods, which is essentially attributed to its geographical origin. In doing so, the geographical domain can be a territory of a country or a region or locality in that territory. The quality of the product is attributed essentially to its geographical origin. If it is goods, either the raw material production or processing or the preparation (Table 1), shall take place in such territory. The Registrar of the GI shall construe the GI in the Registry (Jain, 2009; WIPO, 2003 and 2004).

There are three ways to protect a geographical indication (Vandecandelayere et al., 2010; WIPO, 2004)

- i. using *sui generis* systems (i.e. special regimes of protection);
 - ii. using [collective](#) or [certification marks](#); and
 - iii. using business practices, including administrative product approval schemes.
- These approaches involve differences with respect to important questions, such as the conditions for protection or the scope of protection. On the other hand, two of the modes of protection — namely *sui generis* systems and collective or certification mark systems — share some common features, such as the fact that they set up rights for collective use by those who comply with defined standards.

Broadly speaking geographical indications are protected in different countries and regional systems through a wide variety of approaches and often using a combination of two or more of the approaches outlined above. These approaches have been developed in accordance with different legal traditions and within a framework of individual historical and economic conditions. In many *sui generis* legislations, registrations for GI are not subject to a specific period of validity (Bellefi and Marescotti, 2008; Sople, 2014; Taubman 201). This means that the protection for a registered geographical indication will remain valid unless the registration is cancelled. Geographical indications registered as [collective](#) and [certification marks](#) are generally protected for renewable ten-year periods. The right to use a protected

geographical indication belongs to producers in the geographical area defined, who comply with the specific conditions of production (Dattawadkar and Mohan, 2012).

Trade-Related Aspects of Intellectual Property Rights and GI:

Trade-Related Aspects of Intellectual Property Rights (TRIPS) prescribes minimum standards of protection of GI. Additional protection on wines and spirits were granted under Article 23 of the TRIPS Agreement, in the Uruguay Round of WTO negotiations. And in the Doha Round many member nations desired extending similar level of protections to some of their important goods as well. The TRIPS contains two protections standards for GI and Article 22(2) requires countries to provide a legal means to prevent the use of GI that suggest that the goods originate in a geographic area other than the true place of origin. And Article 23(3) requires that countries should keep in place a legal means to invalidate the registration of trademarks, which contain or consist of a GI with respect to goods not originating in the territory indicated. These provisions are applicable only if the use of the GI is such that it leads to misleading the public as to the true place of origin of the product.

Trade Mark and GI:

Geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a

particular company. A Trade Mark (TM) often consists of a fanciful or arbitrary sign. In contrast, the name used as a geographical indication is usually predetermined by the name of a geographical area. Finally, a trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place. In contrast, a GI may be used by any persons in the area of origin, who produces the good according to specified standards, but because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorized producers.

While Trade Mark (TM) indicates that the product is affiliated with the manufacturer, the GI indicates to the consumer the high quality and reputation of the produce coming from a defined geographical area. The GI can be used by all producers in the area along with their TM. But as a rule, TM that contains a GI cannot be protected, if the use of the TM misleads the public about the true origin of the product. The development of GI is a time-tested process and to carve an aura about the product it takes decades if not centuries. GI creates a positive impression of the product quality, the environmental virtue and human skill of the area. The premium price it fetches happens in a gentle manner over a protracted period and by various assessment procedures. Only if the GI can create a positive mind frame on the client over the product, will the GI be

considered to have some virtue. So while extending the use of GI for food products care should be taken to ensure that the GI strictly complies with all these requirements. Extending the GI for products that is yet to establish a reputation and consumer credibility will dilute the whole purpose of having market dominance and may discredit it.

Superiority of GI:

It is important to be able to distinguish between brand names containing a geographical term and a geographical indication. The reason why there is an increased rush for GI is that the GI protects the consumer and safeguards the interest of the producers. The GI is perceived as both origin and quality indicator because of which the consumer willingly pays a premium price and that leads to the growth of the regional economy. This is evident by the fact that the European Union alone has granted so far more than, 5,000 different GIs.

The GIs of goods Act 1999, is intrinsically integrated with the Section 3 of the Trade Marks Act, 1999 (see Section 2 (2) of the GI Act 1999. The TRIPS agreement says 'to be eligible for a GI, good must possess a quality, reputation or other characteristics attributable to its geographic origin. However, there are fundamental differences between Trade Mark (TM) and GI. TM identifies a manufacturer, implies certain amount of human creativity and is usable only by one agency or entity. On

the contrary, the GI is complex in definition and perception. It denotes the source of origin, where product quality or specialty that the consumer prefers is governed by the specific physical or biological environment. There is no originality or invention or discovery involved and the GI may depend on Traditional Knowledge (TK) for that product development or on the talent of the artisan. Also, the GI can be used by all those who produce that product in that given area.

Relationship between farmer's varieties (FV) and GI:-

The PPV&FR Act 2001 (www.plantauthority.gov.in/pdf/application%20status.pdf) provides certain rights to farmers, such as to save, use, sow, re-sow, exchange, share or sell his farm produce including that of the registered variety. Farmers cannot multiply the seeds of the notified variety on their own or market seeds of registered variety as branded seed with packing, label, etc. and such violation may invite infringement action. The Act recognized farmers as plant breeders and therefore has extended the benefit of entitlement for developing commercial varieties though unaided calls for advanced scientific knowledge, access to diverse germplasm and meticulous experimentation to access the commercial potential of the material. Farmers who do develop new varieties of plants like any other plant breeder can apply their material for the conduct of Distinctness, Uniformity and Stability (DUS) testing and registration.

The Traceability Issue

The traceability of the raw material that yields the GI produce is important and the detail of the growers and their track-record details are a matter of detailed documentation. The GIs are essentially collective marks and are put to use for the collective benefit of the producers in the GI region. Genotype apart, the cultivation practices and seasonality of various consignments should be within the area range and the quality of the produce must remain comparable if GI is to be sustained as a trade advantage. This calls for proper survey of the growing area, identifying the farms, documenting their cultivation details, giving them their unique number, which can be traced, indicating it in the container of the graded and packed produce, etc. The cost involved in this exercise is to be met by the growers themselves or their organizations.

Process of Register for GI

Organizational structure:

Under the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry, the office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) function. Its main office is located in Mumbai. The head office of the Patent Office is located in Kolkata and its branch offices are located in Chennai, New Delhi and Mumbai. The Trade Marks registry is located at Mumbai with branches at Kolkata, Ahmadabad, Chennai, Kolkata and New Delhi. The

Design office is located at Kolkata. The offices of the Patent Information System and National Institute of Intellectual Property Management are located at Nagpur. In order to protect the Geographical Indications (Registration and Protection) ACT 1999, a Geographical Indications Registry has been established in Chennai under the CPDTM. The Intellectual Property Office of India, based at Chennai handles all the matters related to GI application and operations. Detailed information on it could be downloaded from the website: www.ipindia.nic.in. While applying one has to select a particular class (Table 1) to which the intended product belongs.

Geographical Indications Application:

The application can be completed online but must be printed for signature and submission. The following information is required:

- a. Name of applicant;
- b. Address;
- c. Type of goods;
- d. Specifications;
- e. Name of the GI;
- f. Description of goods;
- g. Geographical area of production;
- h. Proof of origin;
- i. Method of production;
- j. Uniqueness;
- k. Inspection body

After completion the application should be submitted to:

Geographical Indications Registry;
Intellectual Property Office Building;
Industrial Estate, G.S.T Road
Guindy, Chennai – 600 032; E-mail: gir-ipo@nic.in; Website : ipindia.gov.in

Steps and process that follows the application is outlined in Fig. 1. The validity of GI Registration is for period of 10 years, which can be revalidated following the same process. Any infringement and unlawful use of GI is punishable under law. In U. P. still only few individuals / organizations have come forward (Fig. 2). Out of 63 GI in agriculture registered, only three namely, Allahabadi Surkha guava, Mango Malihabadi Dusseheri and Kalanamak rice are registered under GI during 2014 (GI, 2014). This is unacceptable situation and due efforts must be government agencies, NGOs and individuals.

Example of GI Registration for Kalanamak Rice

Kalanamak is the famous, prestigious and heritage rice of eastern Uttar Pradesh. An improved variety of named Kalanamak KN3 was already released and notified (Notification of govt of India No. 3 # SO2137 (E) dated 31.08.2013). Kalanamak was also protected under PPV & FRA (www.plantauthority.gov.in/pdf/application%20status.pdf 1117=REG/2009/138) by Participatory Rural Development Foundation (PRDF) Gorakhpur. NGO based in Siddharth Nagar applied to get GI on Kalanamak. The application was "advertised" on the Website (www.ipindia.nic.in) following the procedure that within 3 months any one could protest or advice on the contrary. Participatory Rural Development Foundation (PRDF) based in Gorakhpur cooperated and pointed out several flaws

in the proposal. Description of the Kalanamak variety was incorrect and morpho-agronomic characters were very wrong. The other major flaw was the indicated area for GI, it was merely five villages chosen haphazardly from around Naugarh township of Siddharth Nagar district only. The villages also were not contiguous. This would have been a disaster for Kalanamak rice (Figs. 3, 4), disaster for the community and would have triggered civic strife. However, all was averted by the timely intervention of PRDF Gorakhpur. GI was granted to Kalanamak rice on 8th September 2013 and published in the 2013-2014 issue of GI News. Now GI for Kalanamak covers Agro climatic Zone 6 (Fig. 3) of U. P. covering 11 districts namely Bahraich, Balrampur, Basti, Gonda, Gorakhpur, Deoria, Kushinagar, Mahrajganj, Sant Kabir Nagar, Siddharth Nagar, and Shravasti, located between Nepal border in the north to Ghaghra river in the south, Bahraich in the west to Deoria in the east. Newer dwarf varieties of Kalanamak are being notified like Bouna Kalanamak, Kalanamak 102 and Bouna Kalanamak Kiran (Fig. 3) etc with similar grain quality. With general awareness increasing (Table 2), there is increasing trend in GI registration. Also Details of GI registration issued for agricultural and horticultural products are given in Table 3.

Potential for Registration of Geographical Indication in India and Uttar Pradesh

GI is a powerful tool to protect the ownership right on the natural resources, natural product and by-products, and manufactured goods based on plants and animals (Bagade and Mehta, 2014; Gopalkrishnan et al. 2007; Jain, 2009; Jena and Grote, 2007)). Uttar Pradesh is not only centre of biodiversity but also centre of skilful artisans and product developers. Thus it may be concluded that extremely low numbers of products have received GI registration (Dwivedi Bhattacharjya. 2012; Ganguli, 2009). India has been slow to start and still going slow towards GI registration and in U. P. it has been still slower (Table 2). During 2003 until 2017 only 90 GI registrations have been done for agricultural goods in India although this country is centre of origin of so many plant and animal species. Rich biological diversity abounds India. In addition, there is record of more than 10,000 years of agriculture in India. Out of 36 States and Union Territories in India only 11 have opened their account for GI registration. The trend has been slow like slow food still and there appears no reason other than general lack of awareness about GI even among academicians and institutions 13, 14, 20, 24. Individuals do not see immediate economic gain though it will pay to

county, community and individuals in the long-run (AICA, 2011; Andhra, 2014; Das, 2006, Das 2008, Das, 2009). Some applications are pending, as the process of facilitation has also been slow. Still there is no reason why so few applications are filed annually. Among states, maximum numbers of 39 GI have been registered from Karnataka followed by 30 in Maharashtra 27 in Tamil Nadu, 26 in Kerala. Uttar Pradesh with 24 GI stands at 6th place. None of the seven Union Territories has opened their account even. Limited awareness has been generated by the concerned government agencies (AICA,2011). Although GI has not only economic and social benefits (Gopalkrishnan et al. 2007), yet also protects the national wealth from being unduly exploited by others. It also protects the traditional knowledge, traditional knowledge and germplasm (Nanda, 2013; Nanda and Barpujari, 2012; Nair and Kumar, 2005; Ragnekar, 2009; Sahai and Barpujari, 2007; Siner, 2006; Slow Food) of unique quality. Thus GI is valuable (Thiedig and Sylvander, 2000; UNCTAD, 2013; Ragnekar, 2009; Siner, 2006; Taubman, 2001; WIPO, 2004, WIPO, 2015; WTO, 2004) and imperative for any individual, community and country.

Table 1. State-wise distribution of GI registration done for various categories of products recorded during April – March of each year until August 2017

S. N.	Name of the State	No. of GI done	S.N.	Name of the State	No. of GI done
1	Andhra Pradesh	16	16	Madhya Pradesh	9
2	Arunachal	1	17	Meghalaya	2
3	Assam	6	18	Mizoram	1
4	Bihar	8	19	Nagaland	2
5	Chhattisgarh	3	20	Odisha	15
6	Delhi	1	21	Puducherry	2
7	Goa	1	22	Punjab	2
8	Gujarat	13	23	Rajasthan	14
9	Haryana	2	24	Sikkim	1
10	Himachal Pradesh	7	25	Tamil Nadu	27
11	Jammu & Kashmir	8	26	Telangana	10
12	Karnataka	39	27	Tripura	1
13	Kerala	26	28	Uttar Pradesh	24
14	Maharashtra	30	29	Uttarakhand	2
15	Manipur	4	30	West Bengal	12
	Total				289

Table 2. GI done in U. P. for various categories of products recorded April – March until August 2017

S.N.	Period	Application no.	Geographical Indication (GI)	Goods (As per Sec 2(f) of GI Act 1999)
1	2007 – 2008	50	Allahabad Surkha	Agricultural
2	2008 – 2009	119	Lucknow Chikan Craft	Handicrafts
3	2009 – 2010	125	Mango Malihabadi Dusseheri	Agricultural
4		99	Banaras Brocades and Sarees	Handicrafts
5	2010 – 2011	148	Hand made Carpet of Bhadohi	Handicrafts
6	2012 – 2013	233	Agra Durrie Handicraft	Handicrafts
7		234	Farrukhabad Prints	Handicrafts
8		236	Lucknow Zardozi	Handicrafts
9		237	Banaras Brocades and Sarees (Logo)	Handicrafts
10	2013 – 2014	205	Kalanamak Rice	Agricultural
11		155	Firozabad Glass	Handicrafts
12		157	Kannauj Perfume	Manufactured
13		159	Kanpur Saddlery	Manufactured
14		161	Moradabad Metal Craft	Handicrafts
15		184	Saharanpur Wood Craft	Handicrafts
16	2014 – 2015	389	Meerut Scissors	Manufactured
17		178	Khurja Pottery	Handicrafts
18		397	Banaras Gulabi Meenakari Craft	Handicrafts
19		457	Varanasi Wooden Lacquerware & Toys	Handicrafts
20		458	Mirzapur Handmade Dari	Handicrafts
21	2015 – 2016	459	Nizamabad Black Pottery	Handicrafts
22		145	Basmati	Agricultural
23	2016 – 2017	398	Banaras Metal Repouse Craft	Handicrafts
24		177	Varanasi Glass beads	Handicrafts

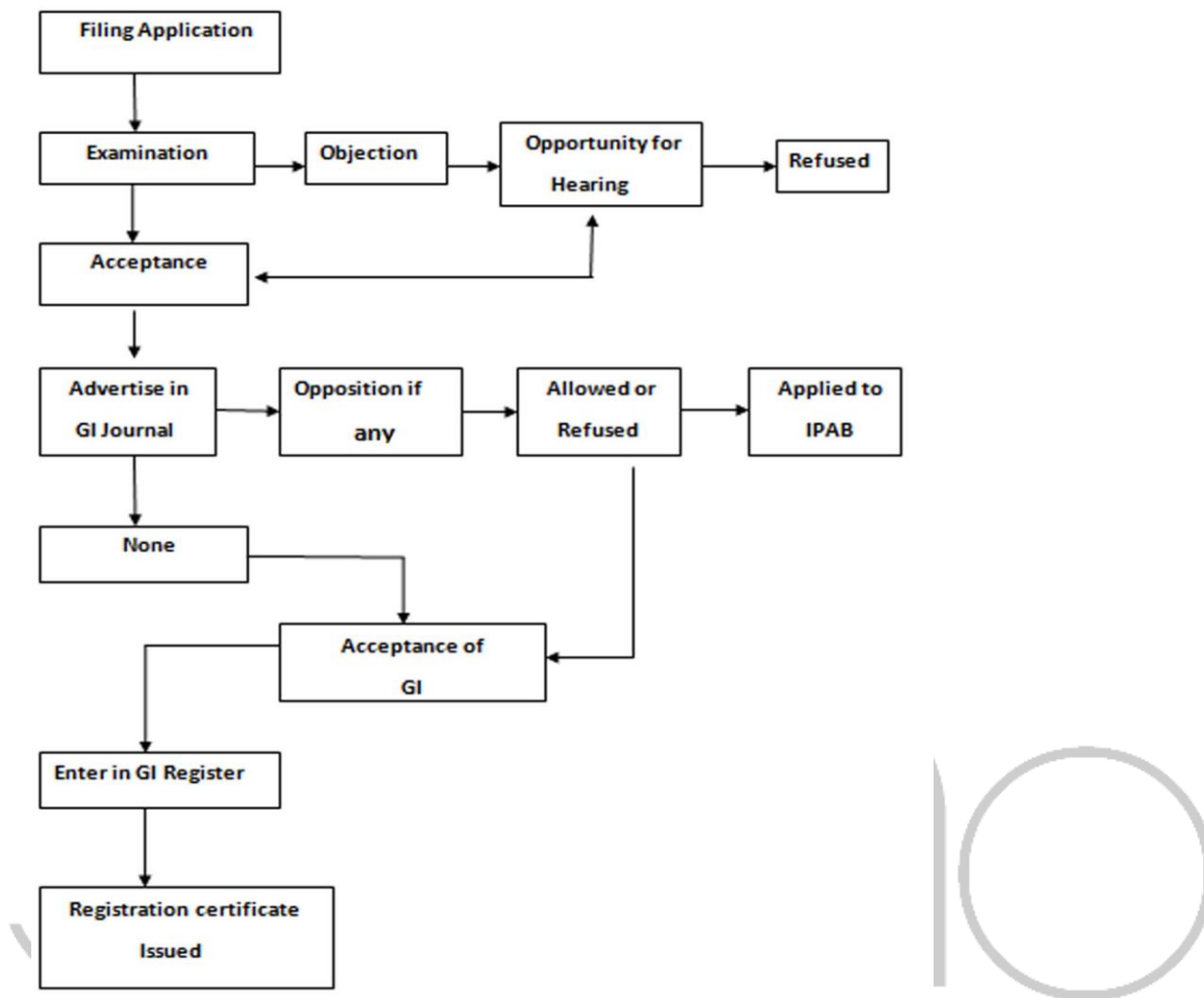


Fig. 1 Steps and processes involved in the Registration for Geographic Indications

GI in Uttar Pradesh

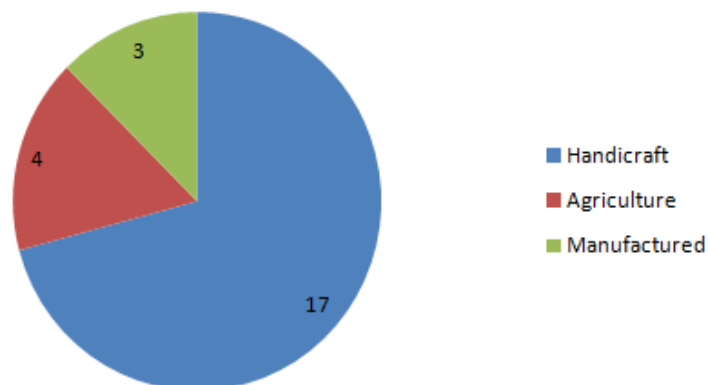


Fig. 2 Relative performance of GI registration in various sectors (Agriculture, Handicraft, and manufactured goods) of U. P., until August 2017



Fig. 3 Kalanamak KN 3 and improved Bauna Kalanamak rice crop grown in the GI area of U. P., India



North-East plain zone of U.P. (highlighted in light green)

[Handwritten signatures and dates]
 24/01/2013
 24/01/2013
 F. R. D. F.
 Gorakhpur

Fig. 4 Geographical Indications area of Kalanamak rice covering Agroclimatic Zone 6 of U. P. (Map submitted for GI registration)

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