

STATE PROPRIETORSHIP UNDER THE GI GOVERNANCE IN INDIA:

ISSUES AND CHALLENGES:

DR. DEBASIS PODDAR* & MS. BIPASHA SAIKIA**

ABSTRACT

While the ‘individual dimension’ is commonplace in intellectual property discourse to the credit of individuals, Geographical Indication is a unique form of intellectual property that is characterized by the ‘collective dimension’ of goods/products. Governance of GI necessitates a collaborative/community approach with multiple stakeholders, including actors/producers, state authorities, traders, distributors, retailers, consumers etc. In India, state authorities play an important role either at the forefront, driving the GI governance mechanism or as a mediator/facilitator, encouraging producer associations to take charge. The authors in this article explore the role of state authorities as registered proprietors of GIs in addressing the concerns/interests of the producers, the real actors of the GI supply chain. An attempt has been made to characterize these state institutional authorities vis-à-vis their powers and functions—either as overarching/monopolistic, welfarist or preservation-centric, depending on the extent of involvement on their part in the concerned GI regime. The authorial intent lies in the engagement of an inquiry into whether and how far these state institutional applicants “represent the interests of the producers” as mandated in the Indian GI legal regime under the Geographical Indications of Goods (Registration and Protection) Act of 1999 and to interpret the legislative terms like ‘producer’, ‘registered proprietor’, etc., toward justification of these state institutional authorities as registered proprietors and decipher whether their statutory powers and functions commensurate with the legislative objectives associated with the Indian GI regime. After the performance appraisal of these state institutional authorities as registered proprietors, the authors conclude this treatise with a few suggestions for better performance of these authorities in the time ahead.

I. INTRODUCTION

Geographical Indications [“GIs”] are characterized by a “collective dimension”. They are community rights, i.e. commodities produced by local actors in geographically defined areas but marketed globally. They are multifunctional instruments that conform to ‘product specifications.’ ‘Product specifications’ are code of practices outlining uniform standards regarding method of producing the GI good and quality considerations to be maintained. The document is an output

* Dr. Debasis Poddar is Professor of Law, National Law University and Judicial Academy, Assam. Alumnus of National Law School of India University Bangalore, he has served several premier institutions including two other National Law Universities in Jodhpur and Ranchi respectively.

** Ms. Bipasha Saikia is Assistant Professor of Law, JB Law College, (affiliated to Gauhati University) and also, a Ph.D. candidate in National Law University and Judicial Academy, Assam. Alumna of National Law University Jodhpur, she has had specialization in Intellectual Property Laws to her credit.

of negotiations among producers/local actors, designed to protect the essence of the place, like natural resources and indigenous knowledge used in producing GI goods.¹

In recent times, GI products have seen greater expansion of their markets despite GIs being local goods, crossing domestic borders even. There thus exists a “local-global dichotomy” in GIs.² Managing this requires the creation of collaborative networks involving many stakeholders, with state institutional authorities being one of them.³ Complicated challenges arise on deciding factors like product specifications, delimitation of the production area of the GI, control/inspection functions that ensure conformity with product specifications at various levels and most significantly, accommodating and representing the interests of all producers of the GI concerned, which is the cornerstone of the Indian GI system, governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999 [“GI Act”].⁴

GIs being collective goods with several stakeholders; their management requires an organized system designed to govern GIs so that there can be maximum utilization of their value. Governance in the context of GIs refer to an elaborate set-up, comprising GI producers, bodies that register GIs, bodies that engage in market-related activities of these GIs or their promotion and brand building exercises and the enforcement mechanism that reinforce GI protection upon instances of misappropriation. Thus, GI governance is a collaborative process, hinged on the cooperation and coordination among multiple actors. Broadly, two approaches drive GI governance globally – the producer-led model and the state-led model.⁵ From the filing of GI applications to measures adopted post-registration, the extent of involvement of state authorities differs across jurisdictions. GIs originated in the European Union [“EU”] which has century-old laws governing them.⁶ But in the developing world, their arrival is fairly recent. On account of differences in economies, the role of the state varies across countries.⁷ To illustrate, in France, GI applications for the purposes of registering the GI products are filed and submitted by the producers who produce the GI products. But in India along with countries like Vietnam and

¹ Barbara Pick & Delphine Marie-Vivien, *Representativeness in GIs: A Comparison between the State-Driven and Producer-Driven Systems in Vietnam and France*, 13 SUSTAINABILITY 5056 (2021).

² Sarah Bowen, *Development from within: The Potential for GIs in the Global South*, 13 J. WORLD INTELL. PROP. 233 (2010).

³ Cerka Bramley, Estelle Biénabe & Johann Kirsten, *The economics of geographical indications: Towards a conceptual framework for Geographical Indication Research in Developing Countries*, 1 THE ECONOMICS OF INTELLECTUAL PROPERTY 111 (2009).

⁴ *Id.*

⁵ Pick & Marie-Vivien, *supra* note 1.

⁶ Kasturi Das, *Geographical Indications at the WTO: An Unfinished Agenda*, 4-6 (East Asian Bureau of Economic Research, Working Paper No. 162, 2010).

⁷ Karl M. Rich, *Trajectories of Value Chain Governance and GIs: Issues for Upgrading Handicraft Goods in India*, 1-10 (CUTS CITEE, Working Paper No. 1/2011, 2011).

Indonesia and other developing economies, it is the state authorities that lead when it comes to filing GI applications for registration.⁸ For example- Patent Information Centre of Assam Science Technology and Environment Council [“**ASTECC**”] under the Department of Science and Technology of the Government of Assam, a state body, had filed the GI application for the registration of “Muga Silk” and its logo in 2007 and 2014 respectively.⁹

The objectives of GI protection include socio-economic benefits to the producers and the overall development of the region. In this regard, the role of the state assumes significance as GIs work on the spirit of cooperative entrepreneurship, and the state becomes the adhesive that brings all the stakeholders together. The objectives of GI require unification of purpose of all along the supply chain to a common goal of development. Part IV of the Indian Constitution elaborates on *Directive Principles of State Policy* [“**DPSPs**”]. They are guidelines based on the foundation of social and economic justice and are concrete socio-economic goals whose purpose is to guide the government in the establishment of a welfare state. DPSPs thus, are not mere rhetoric but executable guidelines for ‘social, economic and political justice’ of the citizenry.¹⁰ Thus, Part IV is the fount for the justification of the involvement of the state in GI governance. GIs being tools of socio-economic development and state being one the stakeholders in their management; by engaging in GI-related activities, the state is fulfilling its mandate under Part IV of the Indian Constitution.

In developing countries, the primary objectives of GIs are preserving the traditions associated with the GI, uplifting the producers’ community, and developing rural areas as a whole.¹¹ Accordingly, the GI governance mechanism is designed. For instance, handicraft GIs primarily have the objective of ensuring the welfare of the artisans and protecting the rich cultural heritage so that the art form does not decline. This requires state intervention too. But agricultural GIs do not share similar concerns like handicraft GIs. This is so because agricultural GIs are produced by farmers whose very livelihood depend on their earnings from their produce. This statement can be substantiated considering that we are still largely an agriculture-based economy. Handicraft GIs apart from commercial considerations are ruled by the relatively emotional component of

⁸ Pick & Marie-Vivien, *supra* note 1.

⁹ *Application for GI for Muga Silk of Assam*, GEOGRAPHICAL INDICATIONS REGISTRY (April 9, 2007), <https://search.ipindia.gov.in/GIRPublic/Application/Details/55>.

¹⁰ Berihun Adugna Gebeye, *The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights, A Comparative Study of Ethiopia and India*, 10 VIENNA JOURNAL ON INTERNATIONAL CONSTITUTIONAL LAW 4 (2016).

¹¹ Bramley, *supra* note 3, at 114.

maintaining a tradition and has significant cultural considerations as well. Agricultural GIs are expected to fulfil market expectations requiring active involvement of state authorities like Department of Agriculture/Horticulture or other marketing bodies that necessitate a more aggressive different kind of state involvement when compared to handicraft GIs.¹² The Indian law, based on the objectives of the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 [“TRIPS”], has the interests of the producers and consumers as its primary objective,¹³ which must be reflected in the decisions and actions of the state GI applicant. TRIPS was the first international agreement having an exclusive chapter on GIs replete with enforcement mechanism and was instrumental in ensuring a universal protection for GIs by means of TRIPS-compliant national laws. TRIPS clarified GI-related concepts along with providing detailed provisions on misappropriation of GIs.¹⁴

The functioning of the GI applicant must not be autocratic, sidelining the concerns of the producers that have largely diversified in recent times. From socio-economic concerns like livelihood, better revenues, and preservation of tradition to dealing with threats from middlemen and outsiders, misappropriation and overall development of the region along with sustainability of production methods due to climate change; concerns of producers are varied. In recent times, concerns of producers are not confined simply to improved socio-economic returns, which is definitely overarching and pervasive, but more than that, enhanced representation in the decision-making process of GI governance and a stronger voice and improved position in the negotiating table. Producers as a community must no longer be relegated to the background. Accommodating these concerns is the primary role of the registered proprietor whose actions must result in ensuring equitable distribution of benefits (of all kinds) down to the real producers.

Prior to TRIPS was the Lisbon System that clarified only on “Appellations of Origin”.¹⁵ TRIPS, the Lisbon Agreement, 1958 and the Geneva Act, 2015 are silent as to who can be a GI applicant.¹⁶ Countries have framed their own laws on this. Section 11(1) of the GI Act, 1999, states that GI application can be filed by “any association of persons or producers or any organization or

¹² Delphine Marie-Vivien & Estelle Bienabe, *Geographical Indications for Agricultural and Handicraft Goods: The Strength of the Link to the Origin as a Criterion*, 17 PERSPECTIVE 1-4 (2012).

¹³ Agreement on Trade Related Aspects of Intellectual Property Rights, art. 7, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

¹⁴ *Id* at art 22.

¹⁵ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, art. 2, Oct. 31, 1958, U.N.T.S 923.

¹⁶ Latha Nair, *Should India Join the Geneva Act of the Lisbon Agreement, 2015?*, SPICYIP (March 12, 2020), <https://spicyip.com/2020/03/should-india-join-the-geneva-act-of-the-lisbon-agreement-2015.html>.

authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication.” Statutory bodies as an extension of the term “any organization or authority established by or under any law for the time being in force” are entrusted with the power to file for GI registration under this Section. Naturally, this can extend to mean even state authorities are entrusted with the power to file GI applications for registration. Thus, analysis of Section 11(1) clarifies the right given to varied state authorities in India to furnish GI applications.

Against this backdrop, after having outlined the collective dimension aspect of GIs necessitating a different method of governing them, the role of state in GI governance and the fact that state authorities have the statutory right to file GI applications provided they “represent the interest of producers”; the paper makes an honest attempt at analyzing the state-driven approach of GI governance in India with a special focus on state authorities as registered proprietors and how well they fulfil the claim of “representing the interests of the producers” as mandated in the GI Act, 1999. After an elaborate analysis of the Indian experience, the authors conclude that producers/local associations in India, despite being registered as GI applicants for some GIs require more space to voice their opinions on decisions like product characterization, delimitation of the geographical territory, production processes, quality standards, and most significantly post-registration measures, covering the entire spectrum of GI governance. Even as GI applicants, they are heavily dependent on state support in crucial decision-making matters involving funds and market linkages. As for state-registered proprietors, they need to enhance their engagement with the real producers to achieve the desired objectives of GIs if they truly intend to “represent the interests of the producers”. However, this paper has only provided a brief study of this issue, thereby provoking ideas for further research and analysis.

II. STATEHOOD UNDER THE GI REGIME IN INDIA

A. State Institutions as Registered Proprietors

The GI Act provides that “registered proprietor”, in relation to a GI, means “any association of persons or of producers or any organization for the time being entered in the register as proprietor of the GI”.¹⁷ Section 11(1) clarifies who can file the GI application, including in its ambit “any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods,

¹⁷ Geographical Indications (Registration and Protection) Act, No. 48 of 1999, § 2(1)(n) (Ind.). (*Hereinafter* referred to as “GI Act 1999”)

who are desirous of registering a geographical indication in relation to such goods.” From these two provisions and the terminology used (general definition of “proprietor” means holder/owner), along with a bare reading of the GI Act, it is sufficiently clear that registered proprietor and GI applicant refer to the same bodies. Browsing the GI Section on the IPIndia website helps in understanding the ongoing trend of GI proprietorship in India. For instance, Tea Board of India which has filed for GI registration of “Darjeeling Tea” is its GI applicant body, also referred to as registered proprietor, as per the GI Act. Another such body which had registered several GIs under its belt is Northeastern Regional Agricultural Marketing Corporation Ltd. [“**NERAMAC**”], a Government of India enterprise, which is the GI applicant body/registered proprietor for several agricultural and horticultural products from the Northeast. This way, proprietors in India are diverse in character, ranging from statutory bodies to government departments to even State Agricultural Universities.

Section 21 (a) of the GI Act enumerates the rights conferred on registration of a GI. With respect to a registered proprietor, it provides the right to obtain relief in respect of infringement of the GI.¹⁸ This is relevant as a factor in assessing how well-suited state GI applicant bodies are in “representing the interests of producers” and determines their activeness.

In India, state agencies are active in filing GI applications even when they do not produce the goods. This might be justified by the lack of strong producer organizations in India.¹⁹ The GI Rules, 2002, provide the registered proprietors with the rights to manage the GI. The rights of use of the GI are granted to the producers registered as authorized users (AUs).²⁰ The role of the state ranges from filing the GI applications to marketing/branding and ensuring enforcement with varying degrees of involvement, specific to the type of goods being protected. The GI Act allows for the protection of specific goods from agricultural, handicrafts, manufactured and foodstuffs.²¹

The GI Registry records reveal that most registrations are done by “organizations or authorities established by or under any law, representing the interest of the producers” and not by “producers, associations of producers...representing the interest of the producers”.²² Both these expressions are mentioned in Section 11(1) of the GI Act. In Europe, GI applications can be put forth only

¹⁸ GI Act 1999, § 21.

¹⁹ DELPHINE MARIE-VIVIEN, *THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN INDIA: A NEW PERSPECTIVE ON THE FRENCH AND EUROPEAN EXPERIENCE* 179 (Sage Publications, 2015).

²⁰ GI Act 1999, § 21(1)(b).

²¹ GI Act 1999, § 2(1)(2).

²² GI Act 1999, § 11(1).

by an ‘applicant producer group’, meaning “an association, irrespective of its legal form, composed of producers of the same product the name of which is proposed for registration”.²³ But a closer observation of the definition reflects the intent of giving a bigger role to producers with the use of the word only which is not so in India. Trend shows that majority of GIs in India involve the state as an applicant claiming proprietorship under the terms “organizations or authorities established by or under any law” under Section 11(1) that in practice includes commodity boards (for coffee, coir, tea, spice etc), statutory bodies (like Agricultural and Processed Food Products Export Development Authority, [“**APEDA**”] (for Basmati rice), government bodies (State Handicraft Development Corporation for handicrafts) government cooperatives (like Department of Handloom and Textiles of Tamil Nadu for Kancheepuram silk), state’s IP agencies (like Patent Information Centre, PICs like Muga silk), institutes under the government (like Craft Development Institute for Pashmina silk) or state departments (like Department of Horticulture for Coorg Orange), universities (mainly agricultural universities like Karnataka Agricultural University), government companies, trust, or various forms of state undertakings offering support or acting as facilitator to producer groups.

Though various state government agencies are found to be actively engaged in the exercise, there is no homogeneity in these processes within and even across states. Each of these agencies has functions that have subtle differences. For instance, Commodity Boards, being marketing boards, are export-oriented and focused on market expansion, whereas institutes emphasize supporting artisans or reviving dying traditions.²⁴ This trend has been ongoing without any opposition, so it might be safe to assume that the state indeed falls under the definition of “registered proprietor” and is a body qualified to apply for GI registration under Section 11(1) of the GI Act.

Moving to the second part of the definition in Section 11(1) requires the applicant to show how it proposes to “represent the interests of the producers”, i.e. how actively these state GI applicants are working to address the myriad concerns of these producers. “Producer” has a wide definition under the GI Act, including traders, exploiters and dealers of the GI product, and the same shall be dealt with in the next sections of this paper.²⁵

²³ Council Regulation (EU) 2024/1143, of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialties guaranteed and optional quality terms for agricultural products and amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012, art 9(1), O.J. 1143.

²⁴ Marie-Vivien, *supra* note 18, at 132.

²⁵ GI Act 1999, § 2(1)(k).

B. Statal Engagement before the GI-Registration

The existence of a qualitative link between the product and its geographical origin is the hallmark of a sui generis GI system, as in India, for a potential GI to earn the coveted GI tag, which is done by the GI Registry. In this exercise, the involvement of state bodies as applicants can be understood by examining how they carry out the preliminary work of identification of potential GIs and unifying the producers.

Producer associations normally pre-exist registration, and they often make preliminary efforts to acquire the GI tag with necessary support from state authorities. It is generally one or a group of individuals who make the initial efforts and then form an association keeping the welfare of the producers as their objective. For application and documentation, even state universities extend help to the producer associations.²⁶ For Rasgolla GI, West Bengal and Odisha governments were engaged in a legal battle but the efforts of the respective state governments in justifying their demand for GI recognition are commendable. In 2015, the Odisha government set up three committees to study the origin of the Odiya Rasagolla, examined grounds on which other states lay claim to it, and collected historical documents as evidence when the GI tag for the popular sweet was first given to West Bengal. Such activeness on the part of state authorities is crucial for ensuring the interests of manufacturers who have been in this business for years and finally, Odisha secured the GI tag as well.²⁷

For Tirupati Laddu, the Tirumala Tirupati Devasthanams [“TTD”], comprising members appointed by the government, that administers the affairs of the temple was instrumental in securing the GI tag when complaints on poor quality of the laddu came to notice from pilgrims.²⁸ The trust saw the opportunity and filed for GI registration. Organizations like “NERAMAC” identify potential GIs through consultations and recommendations from State Governments, local producers or their own assessments. A preliminary analysis of the origin and uniqueness is conducted by the organization before finalizing the list for GI tagging.²⁹ As already seen, for

²⁶ T. Appala Naidu, *Andhra Pradesh: GI tag for 'Atreyapuram Pootharekulu'*, THE HINDU (June 15, 2023), <https://www.thehindu.com/news/national/andhra-pradesh/andhra-pradesh-gi-tag-for-atreyapuram-pootharekulu/article66973048.ece>

²⁷ Satyasundar Barik, *'Odisha Rasagola' finally gets GI tag*, THE HINDU (July 30, 2019), <https://www.thehindu.com/news/national/its-official-odisha-is-the-organ-of-rasagola/article61589932.ece#:~:text=“Happy%20to%20share%20that%20%23Odisha,tweeted%20Chief%20Minister%20Naveen%20Patnaik.>

²⁸ Srinivasa Rao Apparasu, *Tirupati laddu: A centuries-old tradition in the eye of the storm*, HINDUSTAN TIMES (Sept 30, 2024), <https://www.hindustantimes.com/india-news/tirupati-laddu-a-centuries-old-tradition-in-the-eye-of-the-storm-101727636408238.html>.

²⁹ Priyanka Chakrabarty, *Championing Northeast's Unique Identity Through GI Tagging*, BUSINESS NORTHEAST (Dec. 30, 2024), <https://www.business-northeast.com/northeast-identity-gi-tagging-NERAMAC>

“association of producers”, the Act defines ‘producer’ wide enough to include processors or packagers of agricultural goods, exploiters of natural goods, along with traders or dealers of manufacturing goods.

Bringing the producers together is a challenge for the state bodies and they resort to help from local actors working in unison. There are several instances of GI producers being unified by the efforts of some local non-state bodies, but sometimes they are not deemed qualified for some reason or the other by the GI Registry for being the GI applicant, thus making way for a state body to step in. For specialty coffees, the Coffee Board of India had managed to secure GI registration. However, the identification of a unique local blend of coffee, promotion and even a failed attempt at GI registration was done by a cooperative body named Girijan Cooperative Corporation [“GCC”] for “Araku Coffee” several years before the Coffee Board stepped in.³⁰ Thus, at the pre-registration stage, the GI governance operates from a place of convenience and whichever body has the best interests of the producers can initiate the registration process but the final call for decision-making is taken by the GI Registry with cognizance of the fact situation.

C. State Proprietorship after the GI-Registration: Issues and Challenges

This section aims to discuss the proprietorship of state bodies across different GI categories like handicrafts, agricultural, manufactured and foodstuffs once the GI registration is obtained by examining some concrete issues and concerns. A sector-wise overview of challenges is examined first before delving into each issue individually.

1. A Sector-Wise Overview

a) Handicrafts

Handicraft GIs in India are threatened by the arrival of power looms. After agriculture, the handloom industry is the second-largest employer. If only power looms ensuring great production capacity and quicker sales could be controlled, GIs in the handicrafts sector would be a boon for the artisans concerned. The handicrafts products have the potential to create niche markets because of exquisite craftsmanship.³¹ India has around 350 handicraft GIs registered as of December 31, 2024, excluding foreign GIs.³² GI registrations have been granted to the handloom segment primarily to protect the artists, maintain the authenticity of the manufacturing process

³⁰ Nivedita Ganguly, *Behind Araku Valley coffee's GI Tag*, THE HINDU (April 11, 2019), <https://www.thehindu.com/life-and-style/food/araku-coffee-gi-tag-araku-arabica-geographical-indication/article26805219.ece>.

³¹ Pushpam Singh & Sukanta Kumar Baral, *Unraveling the Impact of Geographical Indication on Consumer Preferences for Handloom Products*, 24 ASIAN JOURNAL OF ECONOMICS, BUSINESS AND ACCOUNTING 547 (2024).

³² *Handicraft Applications*, GEOGRAPHICAL INDICATIONS REGISTRY, <https://search.ipindia.gov.in/GIRPublic/Application/ViewDocument>.

and preserve and revive dying traditions.³³ Looking at the list of applicants for these GI products – it is established that more than fifty per cent of them have a state body as a GI applicant³⁴ in forms like state handicraft institutes, state IP agencies like Patent Information Centre and other state departments. There exist cooperative societies and weavers' associations, too, that are producer-dominant, but all are heavily assisted by the state. The government involvement in this sector is intensive and multi-pronged. The underlying challenge for the Indian handicrafts sector is the gradual death of traditional ways of craftsmanship, the decline in the number of weavers, the abandoning of the art form by the younger generation of artisans, rising cost of raw materials - all with the arrival of power looms and cheaper substitutes from neighboring countries coupled with lack of effective government support.³⁵

b) Agricultural GIs

A detailed analysis of the registered proprietors for agricultural GIs reflects that more than fifty percent of them are farmer producer companies [“FPCs”] and growers' associations, which is a satisfactory trend.³⁶ FPCs, registered under the Companies Act are a hybrid between cooperatives and private companies that function on dual considerations of ‘welfare’ and ‘business’ and are an endeavor of farmers coalescing for their overall progress and growth.³⁷ All GI producers are members of some FPC or the other. In the process of registration, they are heavily assisted and facilitated by respective state agricultural universities or other state departments like the Department of Horticulture/Agriculture. In fact, Kerala Agricultural University tops the list of government institutions that was successful in assisting the GI registration of 17 GIs of the state.³⁸ As it happens in India, most agricultural GIs engage in production for the purpose of foreign trade with respective target production to maintain the cost-benefit viability of export business vis-à-vis the concerned agricultural products.

³³ Singh, *supra* note 31.

³⁴ *Details of GI (Geographical Indications) registered Handloom Products under GI ACT, 1999*, HANDLOOMS (June 10, 2024), [https://handlooms.nic.in/assets/img/information_handlooms/Details%20of%20103%20GI%20registered%20Handloom%20Products%20under%20GI%20ACT,%201999%20\(as%20on%2015.03.2023%20\(1\).pdf](https://handlooms.nic.in/assets/img/information_handlooms/Details%20of%20103%20GI%20registered%20Handloom%20Products%20under%20GI%20ACT,%201999%20(as%20on%2015.03.2023%20(1).pdf).

³⁵ Singh, *supra* note 31.

³⁶ *Handicraft Applications*, GEOGRAPHICAL INDICATIONS REGISTRY, <https://search.ipindia.gov.in/GIRPublic/Application/ViewDocument>.

³⁷ B. K. Paty & K. C. Gummagolmath, *Farmer Producer Companies: Issues and Challenges*, 1 EXTENSION DIGEST 1-36 (2018).

³⁸ *GI recognition. Kerala tops GI tag list in FY 2022-23*, BUSINESS LINE (April 5, 2023), <https://www.thehindubusinessline.com/economy/agri-business/kerala-tops-gi-tag-list-in-fy-2022-23/article66702026.ece#:~:text=Accordingly%2C%20between%20April%202022%20and,two%20of%20them%20from%20overseas&text=Kerala%20has%20topped%20the%20list,GI%20Registry%20said%20on%20Wednesday>.

After handicrafts, India has the greatest number of agricultural GIs. Agricultural belts where these GIs are produced generally face challenges like lack of processing centers, transportation challenges (for Northeastern GIs), imparting farmer training programmes, and facilitating discussions/negotiations between FPCs and exporters. In GIs with state bodies as direct applicants like NERAMAC, Coffee Board, Spice Board, Tea Board of India, and Directorate of Horticulture of different states, there is a lack of direct connection with the producers. Some form of farmers' organizations exists to facilitate the connection, otherwise, the concerns of the producers cannot be reflected in the actions of the registered proprietor. For GIs having producers/growers' welfare associations or FPCs as GI applicants, connection with the producers is stronger as producers themselves are direct members of such applicant bodies.

c) Manufactured GIs

India has a total of 21 manufactured GIs as of December 31, 2024, excluding foreign GIs and more than half of them have manufacturers associations as registered proprietors and maintain the trend, with some sort of technical or financial assistance from the state. Products range from beverages (rice wine like Judima, Nashik Valley wine, Feni, etc) to articles like Meerut Scissors, Coimbatore wet grinders, Agra Leather, oil, soaps etc. The emphasis of these GI products is on entrepreneurship for their manufacturers, securing the interests of the manufacturers. For the beverages, the aim is to increase exports and establish a reputation along the lines of Napa Valley in the United States.³⁹

d) Foodstuffs

India has a total of 46 GI foodstuffs as of December 31, 2024, excluding foreign GIs.⁴⁰ Applicants for foodstuffs are societies, NGOs or even state departments filing on behalf of manufacturers. Imitations abound for all kinds of GIs, including foodstuffs. Foodstuff GIs suffer from a lack of product standardization with several unregistered users preparing the GI foodstuff without following the standard rules of preparation. For instance, Goan "Bebinca", a unique dessert, is available everywhere in Goa, but it is not authentic, and uninformed consumers get duped, and the reputation of the product is compromised.⁴¹

³⁹ Namrata Sahu, *Decoding the Enhanced Protection for Wine and Spirit GIs*, 4(1) JOURNAL OF INFORMATICS EDUCATION AND RESEARCH 1429 (2024).

⁴⁰ *Supra* note 34.

⁴¹ Joanna Lobo, *A history of Goa's Bebinca which recently received the GI tag*, THE HINDU (Sept 1, 2023), <https://www.thehindu.com/food/features/a-history-of-goas-bebinca-which-recently-received-the-gi-tag/article67233958.ece>.

2. *Examining the Concerns of Producers*

a) Exclusion of Small-Scale Producers

Small-scale producers are at a position of disadvantage owing to their placement in the supply chain. This prevents them from better negotiation and reaping economies of scale while dominant downstream players control the means of production and the output and capture most of the value in the supply chain. GI was seen as a solution to this problem. GIs are tools that allow producers to bypass mass commodity markets by exploiting growing niche markets. While the above statement encapsulates the desired outcome of a GI tag, but reality differs. Not all the producers of a specific GI product participate in the GI process as some producers see no incentives to join the GI club due to lack of awareness of the benefits of GI registration and other factors like unsatisfactory access to institutional support although the Draft GI Rules are proposing changes.⁴² For some, meeting product specifications associated with GIs without an adequate support system is a hindrance to effective and adequate production. Also, many small producers can feel excluded and when compared to scientific experts/professionals, they find themselves placed far below in the supply chain, their voices stifled.⁴³ Unlike the EU that has an established, mature GI system, with well-defined producer relations and good market reputation of the GI product; India has a nascent, developing system, in which producers are not well connected to each other and thus, relations are fragile, and the reputation of the GI product is minimum or localized.⁴⁴ As a result, many are vulnerable to exclusion from mainstream supply chains.

For handicraft GIs, where decentralization writs large, state intervention is pervasive. To explain, handlooms work in clusters (groups of villages) wherein workers are spread about unevenly. Because of their low placement in the supply chain, they cannot actively partake in or take adequate advantage of economies of scale. As a result, there is a disproportionate sharing of benefits, and a bigger share goes to the traders and master weavers who are in a stronger negotiating position in the supply chain.⁴⁵ Weavers of various GI products of India face multi-pronged challenges, and a justified GI applicant is one who has protected the GI from all challenges. 'Bhavani Jamakkalam Carpets' of Tamil Nadu are facing stiff competition from power-loom-produced carpets.

⁴² *Relaxed geographical indication to motivate producers*, INDIA BUSINESS LAW JOURNAL (Jan. 11, 2024), <https://law.asia/dpiit-relaxed-geographical-indication-rules/#:~:text=Proposed%20amendments%20to%20the%20Geographical,a%20fifth%20of%20previous%20amounts>.

⁴³ Rubén Boga & Valerià Paül, *'Because of its size, it's not worth it!': The viability of small-scale geographical indication schemes*, 121 FOOD POLICY 121 (2023).

⁴⁴ Angela Tregear, Áron Török & Matthew Gorton, *Geographical indications and upgrading of small-scale producers in global agro-food chains: A case study of the Makó Onion Protected Designation of Origin*, 48(2) ENVIRONMENT AND PLANNING 435 (2016)

⁴⁵ Singh, *supra* note 30.

According to many weavers, power looms outside the geographical region are used to create fake GI-tagged “jamakkalams”. Cooperatives had come to the rescue and taken the initiative to revive the age-old craft.⁴⁶ Such stories abound for many GIs of India.⁴⁷

Despite state bodies as applicants for the GI registration, most of these handicraft GIs have failed to alleviate *bona fide* concerns of small craftsmen of the GIs with the onslaught of power looms, lack of access to the organized market, dwindling government support, declining demand, rising cost of raw materials, pushing them out of business. Most of these applicant bodies file handicraft GIs to restore pride in the dying art forms and to revive it among the younger generations. While GIs are going for swift registrations; because of institutional lacunae, their post-registration mechanism (discussed later) is mostly unsatisfactory. Although state support exists, but the same is insufficient compared to the challenges faced by weavers like monopoly of big traders who often treat the small weavers as laborers and not craftspeople.⁴⁸

Awarding of GI implies maintaining the traditional process; any form of compromise is a violation of quality- one of the indispensable aspects of a GI. Similar tales of counterfeiting echo for ‘Patan Patola’, an iconic GI from Gujarat facing an existential crisis,⁴⁹ ‘Kullu shawls’ of Himachal that witnessed imitations flooding markets with inferior varieties from Ludhiana or ‘Madhubani Paintings GI’.⁵⁰ Owing to the indifference of the state government to improve the status of the artists and preserve their artform, the trade of Madhubani paintings has been dominated by middlemen engrossed in making money and doing nothing to preserve this artform, affecting the

⁴⁶ Pranay Jain, *Did You Know About the Bhavani Jamakkalam Carpets Of Tamil Nadu?* OUTLOOK TRAVELLER (Sept 15, 2024), <https://www.outlooktraveller.com/experiences/heritage/all-about-the-gi-tagged-bhavani-jamakkalam-carpets-of-tamil-nadu>.

⁴⁷ Mallik Thattipali, *The Custodian of Royal Weave of Venkatagiri sarees*, THE NEW INDIAN EXPRESS (Nov. 5, 2022), <https://www.newindianexpress.com/magazine/2022/Nov/05/the-custodian-of-royal-weave-of-venkatagiris-sarees-2514643.html> ; Appaji Reddem, *Far from a happy toy story: Traditional toy makers face Chinese goods, high GST and lack of funds*, THE HINDU, (Oct. 17, 2020), <https://www.thehindu.com/news/national/far-from-a-happy-toy-story-traditional-toy-makers-face-chinese-goods-high-gst-and-lack-of-funds/article32876129.ece>; P. Samuel Jonathan, *Durgi stone sculptors stare at a dying art*, THE HINDU (Feb. 28, 2019), <https://www.thehindu.com/news/cities/Visakhapatnam/durgi-stone-sculptors-stare-at-a-dying-art/article26394513.ece>; SNV Sudhir, *Survival crisis: Glory days over for the Bobbili veena as young people turn away*, THE SOUTH FIRST (April 28, 2023), <https://thesouthfirst.com/andhrapradesh/survival-crisis-glory-days-over-for-the-bobbili-veena-as-young-people-turn-away/>.

⁴⁸ Amit Bhelari, *In Bihar's Bhagalpur, weavers face a Silk Slub*, THE HINDU (March 18, 2024), <https://www.thehindu.com/news/national/in-bihars-bhagalpur-weavers-face-a-silk-slub/article67954736.ece>.

⁴⁹ Shramana Ganguly, *GI tag given to Patan Patola saree weavers will safeguard their craft from imitations*, THE ECONOMIC TIMES (March 1, 2014), <https://economictimes.indiatimes.com/industry/cons-products/garments/-textiles/gi-tag-given-to-patan-patola-saree-weavers-will-safeguard-their-craft-from-imitations/articleshow/31188079.cms?from=mdr>.

⁵⁰ Vikas Sharma, *Kullu Cottage Industry gets Community Patent*, BUSINESS STANDARD, (January 19, 2025) https://www.business-standard.com/article/sme/kullu-cottage-industry-gets-community-patent-108060501084_1.html.

integrity of the artists. The court cautioned on the “lack of regular inspection of GI rights of original artists.”⁵¹

It is noteworthy that many handicraft GIs are facing the threat of extinction, and the younger generation is contemplating alternate professions. The growing presence of unsatisfied producers justifies state involvement in remedying the situation.⁵² For instance, Karnataka Silk Industries Corporation Limited [“**KSIC**”], fully owned by the state government and the GI applicant for ‘Mysore silk’, had given the names of some company directors in the place of producers, establishing itself as the sole producer and not representative of the interests of producers, thereby monopolizing the collective good. In defence, KSIC justifies its action on grounds of defending the GI as its registered proprietor and not as the owner of the GI.⁵³

The commendable efforts of the Tea Board of India once witnessed the skyrise of “Darjeeling Tea” as a world-renowned GI.⁵⁴ But in myriad cases, the Commodity Boards have mentioned a mere intention of encompassing the concerns of their producers to the Registry without specifying how they intend to promote the product. These Boards are not the manufacturers of the products but work under the Ministry of Commerce i.e. the state; thus, assumption lies that they are producer centric. They engage in the activities toward commercialization of products and have sufficient legal strength to defend these GIs.⁵⁵

However isolated instances of small producers excluded from this set-up are numerous. For instance, the Tea Board has restricted the use of the Darjeeling name and logo only to tea coming from the 87 tea gardens that have entered into a license agreement with it. Such stringent measures are devised to keep counterfeiting in check, but small farmers jeopardized have lodged complaints of monopolization of Darjeeling tea. Rather, the Board should have facilitated the registration of such small-scale tea growers.⁵⁶

⁵¹ *Patna High Court takes cognizance of plight of Madhubani Painting Artists*, THE TIMES OF INDIA (March 14, 2023), <https://timesofindia.indiatimes.com/city/patna/hc-takes-cognizance-of-plight-of-madhubani-painting-artists/articleshow/98620295.cms>.

⁵² Ankita Anand, *Tangled Threads: The Uncertain Future of Sualkuchi Silk Weaving*, THE WIRE (June 4, 2016), <https://thewire.in/uncategorised/tangled-threads-the-uncertain-future-of-sualkuchi-silk-weaving>.

⁵³ Marie-Vivien, *supra* note 18, at 225.

⁵⁴ Sudhir Ravindran and Arya Mathew, *The Protection of Geographical Indication in India – Case Study on ‘Darjeeling Tea’*, ALTACIT GLOBAL (2009), <https://www.altacit.com/wp-content/uploads/2021/09/The-Protection-of-Geographical-Indication-in-India-Case-Study-on-Darjeeling-Tea.pdf>.

⁵⁵ *Id.*, at 131.

⁵⁶ Manisha Pande, *Discontent Brews over Darjeeling Tea Label*, BUSINESS STANDARD, https://www.business-standard.com/article/beyond-business/discontent-brews-over-darjeeling-tea-label-111011200053_1.html.

Darjeeling was granted the GI tag in 2004, but the living standards of the tea growers have deteriorated over the years, as per some literature,⁵⁷ as the GI tag did not make any significant improvement in their working conditions. The benefits of the GI tag are taken over by the exporters mostly, and these tea growers are working in the fields of these exporters on a daily wage basis, even when the demand for Darjeeling tea is high. All of this when the state government itself gives these estates on lease. Moreover, the conflict between the Darjeeling Tea Association [“DTA”], a body of producers with the Tea Board, calls for synergy among all stakeholders involved. All concerned state departments, like the labour department’s interference, are called for. Otherwise, there is an imbalance of objectives.

Thus, state proprietors need to invest more and accommodate the concerns of the small producers and have detailed policies for their greater inclusion in the supply chain trajectory. These policies can be designed in cooperation with the FPCs, in case of agricultural GIs, which mainly cater to the needs of small producers or other local bodies working closely with the small-scale producers for other GIs like handicraft GIs, to better identify their special concerns. These could be in the lines of better negotiating capacity, non-disruptive access to the market or strengthening market linkages, elimination of middlemen, financial assistance by relevant institutions like State Agricultural Department or National Bank for Agriculture and Rural Development [“NABARD”] to mention a few. The implementation of such policies depends on the will of their respective registered proprietors and how seriously they consider the statutory mandate of “representing the interests of producers” under Section 11(1) of the GI Act, 1999.

b) Authorized Users

Section 17 of the GI Act empowers producers of the GIs to register themselves at the GI Registry as an authorized user [“AU”], a category of persons with specific rights to use the GI. Such a provision means that the concerns of the producers are primary in the GI law. Registering producers as AUs desiring to use the GI tag serves two purposes: it prevents any random producer outside the demarcated geographical area from using the GI tag, and thus free ride on the reputation and goodwill associated with the GI and having an inventory of AUs facilitates easier monitoring of all who are using the GI tag to check malpractices.⁵⁸

⁵⁷ *Techno-Economic Survey of Darjeeling Tea Industry*, TEA BOARD OF INDIA (2001), techno_economic_darjeeling-2001.tif.

⁵⁸ Sayantani Datta, Padmavati Manchikanti & Niharika S. Bhattacharya, *Enhancing Geographical Indications Protection in India for Community Relevance*, 24 J. WORLD INTELL. PROP, 420 (November 2021).

However, this provision comes with challenges as many producers are unaware of it, and the rate of registration is low. This is possibly due to a lack of financial resources or the know-how to file GI applications. There is the possibility that the actual commercial benefit goes to the middlemen and not the real producers, although the latter has the statutory right to oppose GI applications on grounds of non-representation of their interests.⁵⁹ User authorization drives are carried out by state institutes by organizing workshops. Since the supply chain of handicraft GIs is highly heterogeneous, the intervention of the state is instrumental in bringing all stakeholders together. Individual handloom GIs might suffer from different concerns, but mostly, all handloom GIs have the same underlying challenges, as already mentioned. Without state support, GIs languish. For instance, the IPR Cell of Tezpur University organized a workshop on ‘Muga Silk’ that despite registration in 2007, had mere 2 AUs till 2014 for reasons like low levels of awareness of the significance of GI, non-availability of reliable quality monitoring systems to differentiate “genuine Muga” from “adulterated Muga”, insignificant organizational support across the entire value chain including nonexistence of enforcement mechanisms in Assam against adulteration and difficulties in making and sending error-free applications.⁶⁰ Occasionally NERAMAC carries out workshops focusing on AUs registrations for products under its belt in collaboration with different state departments.⁶¹

Currently, India has a total of 29,624 AUs for 643 registered GI products. Agricultural GIs, having almost 200 registered products, have the greatest number of AUs. In contrast, it is 44 per cent of the total number of AUs for handicraft GIs with 342 registered GIs. This disparity reflects non-uniformity in the AU registrations across different GI categories. Post an amendment of the GI Rules in August 2020, the requirement of filing joint applications for an AU with its registered proprietor was removed, and that led to an increase in the AU registrations from 6,935 before the

⁵⁹ Meenal Garg, *Critical Analysis of the Need for “Authorised User Registration” and “Quality Monitoring” under GI Law*, SCC TIMES, <https://www.sconline.com/blog/post/2021/09/27/need-for-authorised-user-registration-and-quality-monitoring-under-gi-law/>.

⁶⁰ With the funding support of the MHRD Chair Professor; Kiran George, *When the Tezpur University came to GI tagged Muga Silk of Assam’s rescue*, SPICYIP (April 29, 2015), <https://spicyip.com/2015/04/when-the-tezpur-university-came-to-gi-tagged-muga-silk-of-assams-rescue.html>.

⁶¹ *State-level workshop held for NERAMAC GI products in Karbi Anglong*, THE HILLS TIMES (November 14, 2024), <https://www.google.com/search?client=safari&rls=en&q=State-level+workshop+held+for+NERAMAC+GI+products+in+Karbi+Anglong%2C+THE+HILLS+TIMES&ie=UTF-8&oe=UTF-8>; *Neramac’s GI Initiative to User Authorize 300 Tripura Queen*, TRIPURANEWSLIVE (May 27, 2023), [https://tripuranewslive.com/neramacs-gi-initiative-to-user-authorize-300-tripura-queen/#:~:text=In%20continuation%20to%20NERAMACs%20endeavors,of%20the%20NERAMAC%20processed%20certification;Bikash+Singh,+NERAMAC’S+Initiative+to+authorize+800+North+East+Region+farmers+to+use+GI-tagging+of+its+processed+Certifications,+THE+ECONOMIC+TIMES,+May+9,+2023\),](https://tripuranewslive.com/neramacs-gi-initiative-to-user-authorize-300-tripura-queen/#:~:text=In%20continuation%20to%20NERAMACs%20endeavors,of%20the%20NERAMAC%20processed%20certification;Bikash+Singh,+NERAMAC’S+Initiative+to+authorize+800+North+East+Region+farmers+to+use+GI-tagging+of+its+processed+Certifications,+THE+ECONOMIC+TIMES,+May+9,+2023),) <https://m.economicstimes.com/industry/miscellaneous/neramac-initiative-to-authorize-800-north-east-region-farmers-to-use-gi-tagging-of-its-processed-certifications/articleshow/100102853.cms>.

amendment to 22,689, taking the total number of AUs to 29,624 as on August 12, 2024.⁶² Gathering these producers for registration as AUs is also challenging because they lack the incentive to join the GI club for reasons like conformity costs, as traditional methods of production are resource intensive. An active and invested proprietor can navigate such challenges to unify producers into a coherent association.⁶³

c) Standards

In Asia, product control systems are nascent; they sometimes exist theoretically in legal frameworks but are rarely implemented in practice. Indian law states that every GI application shall contain “the particulars of the mechanism to ensure that the standards, quality, integrity, and consistency or other special characteristic are maintained by the producers, maker or manufacturers of the goods, as the case may be; and shall include particulars of the inspection structure, if any, to regulate the use of the GI.” Although Form GI-1 mandates an inspection body formation, there is no corresponding provision in the GI Act. There is a disparity between the procedural and the substantive law here. The inspection body, formed by the proprietor, is important for post-registration. Thus, in practice, legally speaking, there is no proper mechanism that ensures quality control of GI post-registration.⁶⁴

With the state as a registered proprietor, consumers might be assured of the quality of GI goods and have confidence in the system because of the overall perception of the state as the custodian of its people.⁶⁵ States are in a better position, financially and technically, to manage and defend GIs. Decisions related to the enforcement of GIs on foreign shores or taking care of exports require the expertise of state officials and funding. Producers however must be represented in the any decision-making process that concerns them.

Quality being the factor of attraction of a GI is susceptible to compromise. What this means is that consumers value premium goods like GI because of their place of origin that is believed to impart unique qualities to the product that are non-transferable and thus, cannot be replicated

⁶² Mohit Sharma, *How India can reap the benefits of Geographical Indication: A Relook at Post-Registration Framework*, DOWN TO EARTH (Oct. 7, 2024), <https://www.downtoearth.org.in/agriculture/how-india-can-reap-the-benefits-of-geographical-identification-a-relook-at-post-registration-framework>.

⁶³ Cardoso VA, Lourenzani AEBS, Caldas MM, Bernardo CHC, Bernardo R, *The Benefits and Barriers of Geographical Indications to Producers: A Review*, 37 RENEWABLE AGRICULTURE AND FOOD SYSTEMS 707–719 (2022).

⁶⁴ Delphine Marie-Vivien, *Protection of Geographical Indications in ASEAN Countries: Convergences and Challenges to Awaken Sleeping Geographical Indications*, 23 J. WORLD INTELL. PROP. 328 (July 2020).

⁶⁵ Claire Durand & Stéphane Fournie, *Can Geographical Indications Modernize Indonesian and Vietnamese Agriculture? Analysing the Role of National and Local Governments and Producers' Strategies*, 98 WORLD DEVELOPMENT 93-104 (2017).

elsewhere. And often such products have a favorable reputation in the market and are thus chosen and favored by consumers. For instance, Pashmina Shawls are available in various places across the country, but a genuine authentic Pashmina Shawl comes from a particular place in Kashmir from Himalayan goats whose wool is of a different quality, and it is this exclusivity of a GI that some people attempt to exploit by misusing the brand value of the GI product.

3. Menace of Misappropriation

Section 22 of the GI Act provides that infringement arise when a registered GI is used by a person who is not the AU and “by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods” or “uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.” Explained further that “act of unfair competition” means “any act of competition contrary to honest practices in industrial or commercial matters”.⁶⁶

The case of ‘Sanganeri GIs’ is interesting. Sabyasachi Mukherjee, a famous Indian fashion designer received open letters from 15 Indian crafts associations as the prints used in one of his collections were very similar/identical and were very “reminiscent of the original” to the GI-protected Sanganeri prints and the artisans and who had proprietary rights to these designs were not credited in any manner. Section 22 defines infringement as not having any provision on whether “drawing inspiration” or craft which is “reminiscent of the original” carries any consequences. Also, the collection does not make any outright claims on its origin from Sanganer. As such, there is no direct infringement here, and consumers are possibly not misled. As a response, the artisans’ side may claim that a case of infringement may be made out via the mere implication or suggestion of a connection with the GI, and that principles of ‘passing off’ and unfair trade/colorable imitations may apply.⁶⁷ The law, however, is unclear on this.

‘Banarasi saree’ GI, despite having five inspection bodies, face threats from those within the producer community opting for quick production with power loom sarees with cheap silk

⁶⁶ GI Act 1999, § 22.

⁶⁷ Vikrant Rana & Pranit Biswas, *The Viewpoint - The Sanganeri GI dispute: Cultural misappropriation and the need for benefit sharing*, BAR AND BENCH (Oct. 25, 2021), <https://www.barandbench.com/law-firms/view-point/the-sanganeri-gi-dispute-cultural-misappropriation-and-the-need-for-benefit-sharing>.

imported from China and manufactured in Surat.⁶⁸ The distinctive ‘Toda embroidery’ designs suffer from blatant copying of their designs by other producers for quick sales and misleading descriptions by big brands. The absence of a single overarching body, despite Tamil Nadu Handicrafts Development Corporation as the GI co-applicant to address these concerns, has perpetuated the suffering of the Toda weavers.⁶⁹ There is sufficient cause for a case of infringement, but as observed, GI infringement cases are rarely filed in India.

For tea GIs like Assam (Orthodox), Kangra, Nilgiris (orthodox tea), and Darjeeling Tea, the Tea Board of India is battling infringement with illegal import of Nepal tea into the Indian domestic market, harming the reputation of this appellation⁷⁰ and is one of the most active state proprietors.⁷¹

Spice Board has issued directions to include GI registration details on all spice items branded and out for delivery. This step has been taken to control instances of misappropriation and demonstrate the activeness of the Board in securing the welfare of producers.⁷² ‘Kashmir Saffron’ is adulterated with cheaper alternatives and sold off by middlemen as authentic Kashmir Saffron affecting sales.⁷³ But the intervention of the government here (through Spice Board) is laudable with initiatives like the establishment of a Saffron Park that has facilities for testing, drying and marketing and giving the GI tag, aiding growers and traders alike.⁷⁴ Spurious products affecting sales are the case for most GIs be they handicrafts, agricultural, manufactured or food stuffs. It is thus observed that enforcement is not stringent in India.

Also, regulation of misappropriation that happens online goes unchecked as India has no specific law for this. EU has Regulation (EU) 2024/1143 having provisions for checking GI infringement

⁶⁸ Yogesh Pai & Tania Singla, “Vanity GIs”: India’s Legislation on Geographical Indications and the Missing Regulatory Framework, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE 333-358, (Irene Calboli, Wee Loon Ng-Loy eds. 2017).

⁶⁹ Priti David, ‘Copying our designs is not correct,’ PEOPLE’S ARCHIVE OF RURAL INDIA (May 17, 2019), <https://ruralindiaonline.org/article/copying-our-designs-is-not-correct>.

⁷⁰ Niloy Bhattacharjee, *Assam Tea in Jeopardy as Producers Express Concerns Over Illegal Import of Nepal Tea into Country*, NEWS18 (June 3, 2022), <https://www.news18.com/news/india/assam-tea-in-jeopardy-as-producers-express-concerns-over-illegal-import-of-nepal-tea-into-country-5301697.html>.

⁷¹ S.C. Srivastava, *Protecting the Geographical Indication for Darjeeling Tea*, WORLD TRADE ORGANIZATION, WTO, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm.

⁷² Pramod Thomas, *Spices Board pushes exporters to use GI tags*, THE NEW INDIAN EXPRESS (July 21, 2016), <https://www.newindianexpress.com/business/2016/Jul/21/spices-board-pushes-exporters-to-use-gi-tags-942737.html>.

⁷³ Avantika Bhuyan, *Kashmiri saffron gets the GI tag. Is this the boost that the spice badly needed?* THE MINT (July 30, 2020), <https://www.livemint.com/mint-lounge/food/kashmiri-saffron-gets-the-gi-tag-is-this-the-boost-that-the-spice-badly-needed-111634479702936.html>.

⁷⁴ *Id.*

happening online.⁷⁵ It can be thus concluded that state-registered proprietors are not active in battling misappropriation that affects the rights of genuine producers.

Non-state registered proprietors, too, sometimes file infringement suits. The registered proprietor of 'Bikaneri Bhujia' had filed a case against Defendants alleging 'unauthorized use' and alleging that the overall look of their product 'Pitaara Bikaneri Bhujia' infringes upon their product even though the true place of origin is mentioned.⁷⁶ "The non-GI product cannot be permitted to encroach upon the goodwill and reputation of the GI product by using an identical or similar packaging for both sets of products."⁷⁷

The role of the GI Registry in this regard needs to be looked into. In some instances, the Registry has been mired in allegations of biases in facilitating the GI application of a state body over private bodies despite adequate grounds of opposition from the private party, as in the case of APEDA favoured as an applicant for GI for Basmati rice over Heritage, an NGO;⁷⁸ probably because the Registry considers APEDA, being a government body to be better representative to producers' concerns. For Araku Coffee too, questions arise on why the GCC's attempts for the GI registration failed, its claims dismissed by the GI Registry and proprietorship status given to the Coffee Board. Whether and how far the Registry is biased towards state bodies raises a moot point of concern. The GI Act enumerates the Registrar's role related to the application for registration and confers the Registrar with the powers of a civil court. However, the Registrar's decision is not final, and appeals are allowed. The Act confers the Registrar with powers related to GI registration only, but is silent on post-registration issues. There is a need for the development of an institutional mechanism in this regard. The functions of GI authorities should be clearly laid out either in the statute or by the Registry, making it easier for the producers to reach the authorities.⁷⁹ NABARD not only supports GI registration of a product but also focuses on post-registration activities, such as registration of AUS, renewal of existing registration, marketing support, consumer awareness and training programmes, among others. NABARD has sanctioned projects for the registration of 15,820 producers/manufacturers of GI products as AUs, providing them with the exclusive right to use registered GI.⁸⁰

⁷⁵ *Supra* note 23, at art. 13(4), art. 42.

⁷⁶ *M/S Bikaji Foods Int. Ltd vs M/S Desai Brothers Limited & Anr*, (2023) CS (Comm) 695/2023 .

⁷⁷ *Id.*

⁷⁸ Marie-Vivien, *supra* note 18, at 239.

⁷⁹ Datta, *supra* note 58.

⁸⁰ Sangeetha Kandavel, *NABARD sanctions study to evaluate impact of GI certified products*, THE HINDU (April 30, 2024), <https://www.thehindu.com/news/national/tamil-nadu/nabard-sanctions-study-to-evaluate-impact-of-gi-certified-products/article68118320.ece>.

4. *Promotion and Brand Building*

State-registered proprietors need to introduce innovative ways of establishing and even sustaining brand value. For most GIs, brand value is negligible as consumers are unaware of such GIs even in their own state. Registered proprietors must have detailed plans on how to create brand value in the minds of consumers. Such functions are not mandatorily prescribed in the law. Government involvement is exclusively emphasized for struggling GIs with immense potential having global recognition, like 'Mithila Makhana' of Bihar, facing issues like negligible AUs (67) for a commodity which has about 70,000 primary producers.⁸¹

5. *GI and Climate Change*

Muga silk is a famed GI from Assam, but in recent times, the productivity of the silkworm and, thereby its quantity and quality has been affected on account of factors like fungal diseases in the host plants of these silkworms, increasing temperatures and uneven rainfall patterns, groundwater reduction and the use of chemical fertilizers in the neighboring tea plantations that affects the host plants and the silkworm, affecting the production of authentic Muga Silk. While Muga Silk was bestowed with a GI tag in 2007, much before this challenge arose, the same needs to be used to the best advantage to remedy the situation. Conservation and commercialization of a GI product must happen simultaneously. 'Kanniyakumari Matti banana' and Kashmir's saffron are among several other GI products found to be vulnerable to the impacts of climate change, jeopardizing the livelihoods of many farmers and traders.⁸² While misappropriation is the biggest challenge confronting producers, they are prone to new challenges affecting traditional methods of production necessitating a revisit on product standardization. Kashmir's saffron farming has come under threat from global warming, affecting production, leading to significant sustainability and livelihood issues, and falling short of demand.⁸³ But the law or the Registry has, to date, not devised suitable policies/measures to navigate such challenges that threaten the very integrity of the GI.

6. *Characterizing the GI Applicants*

As discussed, the GI proprietorship in India is diverse. Statutory bodies, Commodity Boards (like

⁸¹ Mohit Sharma, 'Instead of heavy 'attention', makhana needs some 'space', DOWN TO EARTH (Dec. 10, 2024), <https://www.downtoearth.org.in/agriculture/instead-of-heavy-attention-makhana-needs-some-space>.

⁸² C. Palanivel Rajan, *GI-tagged agricultural products face challenges due to climate change*, THE HINDU (Dec. 1, 2023), <https://www.thehindu.com/news/cities/Madurai/gi-tagged-agricultural-products-face-challenges-due-to-climate-change/article67594454.ece>.

⁸³ *Kashmir's saffron comes under threat due to rising global warming*, THE ECONOMIC TIMES (Sept. 1, 2024), <https://economictimes.indiatimes.com/news/india/kashmir-saffron-comes-under-threat-due-to-rising-global-warming/articleshow/113544676.cms?from=mdr#:~:text=Kashmir's%20saffron%20farming%20has%20come,balance%20required%20for%20saffron%20cultivation>.

tea, spice, coffee, etc.), Agricultural Universities, Societies/Cooperatives, FPCs, Producer Associations are all qualified to be registered proprietors of GIs in India. Based on the intent behind their establishment, their function or rather their approach towards GI regulation differs. This section aims to better understand and appreciate the nature and features of such proprietors and their approach towards GIs alike.

a) Overarching/Monopolistic Approach

State registered proprietors in India perform a range of functions. And some perform overarching functions having monopolistic tendencies. For instance, the Tea Board made immense efforts to get the Darjeeling tea logo registered, a logo exclusively used by producers, packagers and exporters. Also, the word 'Darjeeling' has been registered as a Certification Trademark ["CTM"] in India and overseas. Licenses are issued by the Tea Board to AUs of Darjeeling tea and certificates of origin are issued to all exporters. Also, they got a watchdog agency appointed to inspect overseas infringements.⁸⁴

Craft Development Institute ["CDI"] Kashmir has been mired in allegations of monopolizing the GIs under its ambit ('Sozani embroidery' and 'Pashmina') in disregard of the actual artisans on grounds of the latter being incapable of protecting their interests as CDI comprises experts, researchers and high-ranking officials. These allegations have been refuted, stating that being a government agency, they were better placed to uplift the artisans, and CDI's role was limited to a catalyst of GI protection and 'Tahafuz', an association of artisans, was most suitable.⁸⁵

For 'Chanderi Sarees', many government agencies started contributing to the cause of the weavers and providing them with marketing and quality-control opportunities. The state-run textile institute is also involved in checking quality, standardization, promotion etc. They have specific rules in this respect which are still in force.⁸⁶ The Government of Madhya Pradesh had collaborated with the United Nations Industrial Development Organization ["UNIDO"], a specialized agency of the UN to promote industrial development, using a cluster development approach with the object of arming the weavers and making the artisans of Chanderi more dynamic.⁸⁷

⁸⁴ Tea Board, *supra* note 58.

⁸⁵ Marie-Vivien, *supra* note 18, at 237.

⁸⁶ *Id.* at 219.

⁸⁷ Kasturi Das, *Prospects and Challenges of Geographical Indications in India*, 13 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY 148-201 (March, 2010).

Tirupati Tirumala Devasthanam [“**TTD**”] as the applicant for ‘Tirupati Laddu’ has garnered accusations of being monopolistic and commercial by securing GI tag for Tirupati Laddus and depriving other laddu producers of the famous temple town to sell these laddus, making it an exclusive product of the trust body, only benefitting their employees. Opposition was asserted on the basis of GI being a collective property and not the exclusive possession of a single producer. Moreover, the fulfilment of *terroir* here is questionable. Where is the specific geographical area delimitation? Is it only the temple? However, TTD has averred that the laddu is the effort of all its employees and not one sole manufacturer.⁸⁸

For ‘Feni’, a GI product from Goa, all the concerned players coalescing to arrive at a consensus on “club rules” saw the overarching support of the Goa Government, resulting in the state being a co-applicant. For ‘Jaynagar moa’, the Joynagar Moa Nirmankari Society became the applicant and was also a watchdog to conduct thorough examinations before authorizing any outlet to make the sweet. Moa is subjected to imitations with many unregistered users manufacturing and selling the sweet.⁸⁹ The GI has been subjected to checks by a panel of experts to ensure that manufacturers do not deviate from product specifications.⁹⁰ Herein, the applicant is functioning as an inspection body too.

b) Woes of Local Artists: Welfarist Approach of GI Applicants

There are some GI applicants whose primary focus lies in securing the lives of their producers. Kashmir Handmade Pashmina Product Trust [“**KHPPT**”] was a collective effort of Pashmina shawl artisans to combat fakes and preserve Pashmina products. Later, this work was taken over by the CDI, the Kashmir Chamber of Commerce and Industry [“**KCCI**”], and the Directorate of Handicrafts and current registered proprietor is Tahafuz Society (comprising artisans). Before CDI took over, the intent behind the formation of KHPPT was welfarist, putting the concerns of the workforce at the centre. These bodies, based on mutual understanding, have adopted means like good labelling practices to curb fakes. The textile minister has also targeted to increase Ladakh’s population of Pashmina goats to 500,000 and Merino sheep to 1 million by 2030 to ensure a

⁸⁸ Madabhushi Sridhar, *GI for Tirupathi Laddu: Whose Interests are Protected?* BANANAIP (March 16, 2010), <https://bananaip.com/gi-for-tirupathi-laddu-whose-interests/>.

⁸⁹ *Will Joynagarer Moa become extinct soon due to a lack of raw materials?* - *GetBengal story*, GET BENGAL (Dec. 28, 2024), <https://www.getbengal.com/details/will-joynagarer-moa-become-extinct-soon-due-to-a-lack-of-raw-materials-getbengal-story>.

⁹⁰ Kinsuk Basu, *Panel of university professors, scientists and government officials to check Joynagar Moa*, THE TELEGRAPH (Jan. 22, 2024), <https://www.telegraphindia.com/my-kolkata/news/panel-of-university-professors-scientists-and-government-officials-to-check-joynagar-moa/cid/1995366>.

sustainable supply of high-quality wool for the booming industry.⁹¹ For Kashmiri Pashminas, we see greater participation of the local artisans in the decision-making process, like implementing Minimum Support Price [“MSP”] and focusing on women entrepreneurship.⁹²

c) Conservation and Preservation-Centric Approach

Some GIs are in dire need of preservation for reasons like climate change, as discussed. Recent GI literature speaks about challenges that current legal frameworks on GIs face vis-à-vis climate change. Climate change threatens traditional methods of production due to altered climatic conditions. Since GI talks about product standardization, the question arises- how to alter (if possible) production techniques without compromising the integrity of the GI? In the context of India, these upcoming challenges do not find any place in GI policy or law. The examples of Muga Silk and Kashmir Saffron are of relevance here. Producers alone cannot combat such challenges that are multi-layered and active intervention of state bodies is inevitable. Kanniyakumari matti banana farmers are suffering because of climate-induced changes affecting the inherent characteristics of the plant.⁹³

Some proprietors take up the mandate of GI registration to revive lost traditions. Central ‘Travancore Jaggery’ embodies hundreds of years old agricultural tradition involving sugar canes. This practice declined after independence with the establishment of sugar mills in the region. State Agricultural University was instrumental in reviving the age-old practice.⁹⁴

III. PRODUCERS’ INTERESTS: RAMBLINGS WITH RAMIFICATIONS

There is much debate as to how GI applicants can demonstrate that they genuinely “represent the interests of the producers” and the meaning associated with this phrase. The deeper the connection between the registered proprietor and the producers, the better the former’s justification for being the applicant for that GI. Although the question regarding the ability to “represent the interests of

⁹¹ *Ladakh Pashmina wool officially gets GI tag; Kashmir Pashmina products get boost*, ZIRAT TIMES (Oct. 6, 2024), <https://ziraattimes.com/2024/10/ladakh-pashmina-wool-officially-gets-gi-tag-kashmir-pashmina-products-get-boost/#:~:text=Leh%2C%20Oct%206%3A%20In%20a,officially%20awarded%20to%20the%20region.>

⁹² *MSP for hand spun, hand woven Pashmina fixed*, GREATER KASHMIR (Aug. 21, 2021), <https://www.greaterkashmir.com/uncategorized/msp-for-hand-spun-hand-woven-pashmina-fixed/#:~:text=After%20discussions%20and%20considering%20various,woven%20Shawl%2C%20the%20statement%20states.>

⁹³ C Palanivel Rajan, *GI-tagged agricultural products face challenges due to climate change*, THE HINDU (Dec. 1, 2023), <https://www.thehindu.com/news/cities/Madurai/gi-tagged-agricultural-products-face-challenges-due-to-climate-change/article67594454.ece>.

⁹⁴ U. Hiran, *Taste tradition of central Travancore makes a sweet revival*, THE HINDU (Aug. 10, 2024), <https://www.thehindu.com/news/national/kerala/taste-tradition-of-central-travancore-makes-a-sweet-revival/article68501431.ece>.

producers” can be answered using an empirical form of research, the authors here make an honest attempt to arrive at an answer based on the functioning of state proprietorship of the Indian GIs. Producers are the foremost stakeholder of any GI. GIs are the output of a producer’s toil, and it is justified to say that it is they who must be the primary recipient of the benefits that a GI is capable of generating. But the GI Act has an extensive understanding of who can be a producer. The definition of ‘producer’ is wide enough to include traders and dealers, the interests here are referred to in the context of actual producers of GI. A thorough analysis of the GI applicant was pertinent because once registered, the applicant shoulders a host of responsibilities associated with the GI. Therefore, examining the locus standi of the applicant is crucial.

A reading of the GI Rules, 2002 establishes that the Indian regime mandates furnishing details on how the applicant intends to represent the interests of producers by filing an affidavit,⁹⁵ i.e. justifying their right to be the GI applicant. They need to have the particulars of all genuine producers proposed at the time of registration, which is the least the applicant can do. The Intellectual Property Appellate Board [“**IPAB**”] in a significant case had ruled that “Even though the definition can include businessmen, the vulnerable groups viz., artisans, actual craftsmen and growers who are the real interested persons cannot be left out. The main object of the Act is to protect those persons who are directly engaged in...making or manufacturing the goods. If the creators or makers prove that the application has been made without their knowledge, the registration will have to be removed. The application shall adduce credible evidence to show that the producers are desirous of coming together to protect the Geographical Indication.” In other words, “the targeted group under the Act cannot be left unaware about the filing of any application which affects them.”⁹⁶

Rule 33 of the GI Rules, 2002 states that a Consultative Group comprising seven members “well versed in the varied intricacies of this law or field” shall be constituted for examining the application presented before the Registrar. In the light of the Rules, a person with expertise shall be a member of the Consultative Group to lend credibility to the proceedings. The resulting Report shall be a complete document helping the Registrar in arriving at his/her conclusion.

In the case of *Subhash Jewellery v. Payyannur Pavithra Ring Artisans*,⁹⁷ the IPAB also concluded that “a mere claim that the society is called Payyannur Pavithra Ring Artisans and Development

⁹⁵ The Geographical Indications of Goods (Registration and Protection) Rules (2002), 32(1)(6).

⁹⁶ *Subhash Jewellery v. Payyannur Pavithra Ring Artisans*, (2013) (55) PTC 197 IPAB.

⁹⁷ *Id.*

Society would not suffice. It was observed that the applicant failed to set out the particulars such as names of producers, the nature of their involvement (whether they manufacture the ring or whether they trade/deal in the manufacture of rings), place of production etc... “Further, it was noted that none in the Consultative Group constituted pursuant to Rule 33 of GI Rules, 2002 was familiar with the craftsmanship of gold/ jewelry”.

While the definition of ‘producer’ is wide and includes traders and dealers, it is actually the most vulnerable – the real producers (the ones actually manufacturing the GI good)- who need protection, as the aim of the GI Act is to empower the disadvantaged lot. The legitimacy of the state as a GI applicant under the GI Act can still be disputed on the grounds of inadequate/non-representation of the interests of producers.

The involvement of state-registered proprietors is deeply rooted in India. The efforts of some of these state bodies as applicants are commendable. For some GIs, although the GI is registered in the name of a state body, groundwork like unifying the producers is done by other bodies like cooperatives, FPCs, societies, manufacturer’s associations, etc.

With regard to Araku Coffee, as discussed earlier, the question arises that, having worked with the local farmers for years, was GCC not more representative of the interests of producers than Coffee Board if its claims of empowering tribal coffee growers, offering market access, eliminating middlemen and enhancing productivity are considered?⁹⁸ Similarly, as discussed, an NGO named Heritage saw denial of their GI application for ‘Basmati’ despite being a farmer’s body and instead the tag was awarded to APEDA, a statutory body.⁹⁹

There is literature supporting the idea that even after acquiring GI status with the help of state proprietorship, actual producers have not benefitted. Rather, intermediaries who are marketing the GI products are appropriating undue profits by diluting the GI’s reputation, and they have no one controlling them.¹⁰⁰ ‘Lucknow Zardozi’ obtained GI in 2013, but the situation of the weavers remains grim as most fashion designers and retailers exploit their products at cheap rates, with

⁹⁸ *Id.*

⁹⁹ Marie-Vivien, *supra* note 18, at 213.

¹⁰⁰ VITÓRIA APARECIDA CARDOSO ET AL., THE BENEFITS AND BARRIERS OF GEOGRAPHICAL INDICATIONS TO PRODUCERS: A REVIEW 714-716 (Cambridge University Press, 2022)

“lack of government apathy” being a major concern.¹⁰¹ Producers, too, are powerless as they lack organizational capacity and also due to inefficient post-production management.

The GI Act has no provision for producers of the GI product to mandatorily be members of any producer association or such an association to pre-exist registration. However, the Registry’s responses to GI applications reflect their intent to foresee not only the establishment of such producer associations but also conferring post-registration internal watchdog responsibilities on them.¹⁰² In the EU, the law is affirmative with respect to producer associations. And as discussed, their formation is mandatory. Actually, questions on producer membership does not much arise in India because of double registration. Section 17 provides for registration of AUs if they wish to use the GI tag. This automatically confirms their association with the registered proprietor. Thus, the question remains – is membership really a necessity when the producer concerned has already registered at the GI Registry? What if a producer is a member to an association but has not registered as an authorized user? Meaning thereby, that there are several producers who have been producing the GI good before the status of GI was conferred on that product, and if some such producers did not register themselves at the GI Registry but they are members of some other producer associations, what can be said of their status? There seems to be no clear answers.

It is thus clearly established that statal authorities play a significant part in the GI governance system of India. They file applications, engage in promotion and brand-building exercises to advance the GI and offer all kind of assistance as required. However, in the near future, the intervention or rather involvement of the state in GI management in India may change. It may become ‘transitional’ in the future as the government might wait for the increasing capacity of producers from active to passive. In some instances, the state considers itself to be the guardian of GIs and not their sole registered proprietors. Department of Horticulture, Government of Karnataka does not claim itself to be the owner of GI ‘Coorg Orange’ but simply the guardian.¹⁰³ Understanding the functioning of state-registered proprietors is crucial as it allows us to understand how they are catering to the concerns of the producers. However, there are no established legal rules on how these proprietor bodies should function with regard to exercises like product specifications or ensuring post-registration management, obliquing the manner of their functioning.

¹⁰¹ Hasan Zia Rizvi, *Lucknow Zardozi Artisans Are Hanging by A Thread*, TWO CIRCLES (May 25, 2023), <https://twocircles.net/2023may25/449031.html>.

¹⁰² *Supra* note 24.

¹⁰³ Marie-Vivien, *supra* note 18, at 237.

In India, for registered proprietors, as observed across different GI categories, there is an overlapping of functions. Protecting GIs is a daunting task. One registered proprietor addressing all issues arising post-registration of a GI is a big challenge and involves resources. It becomes more expensive when the GI applicant seeks registration and protection in the overseas market due to the lack of a single coherent uniform approach.¹⁰⁴

In the case of handloom, the producer communities are largely from remote rural areas. Without adequate institutional support, these producers are not equipped to fight their myriad challenges. Thus, handloom sector GIs need active assistance of state-run institutions for their continuity and revival and also considering GIs are premium goods, to penetrate high-end markets. But lack of empirical data on the functioning of these GI applicants prevents us from forming any concrete conclusion. We see less participation of the producer communities in the decision-making process as most of these GIs are registered for “revival” purposes. As for state GI applicants, more than 30 percent of India’s GIs are registered by government agencies, which has not effectively benefited the local communities.¹⁰⁵ Therefore, the government is playing an overarching role in GI governance, trying its best to act in a democratic fashion, taking note of producers’ concerns, but the same is not seeing the desired effect.

IV. THE GI PERFORMANCE APPRAISAL: PRESCRIPTIONS AND PROSCRIPTIONS

The existing GI regulatory framework lacks transparency and accountability on many fronts. For instance, the Registry’s requirement from the applicants on post-registration quality control and inspection bodies violates the natural justice principle of ‘Nemo judex in causa sua,’ no one should be a judge in one’s case. This is so because registered proprietors themselves are required to provide details of the inspection structure appointed by them, if any, to ensure quality control post-registration, along with reporting the same to the GI Registry but whether the same is implemented, there is no way to know. In place of a registered proprietor of a GI checking the quality of its self-registered goods, why not there be a neutral agency for monitoring purposes? For better understanding, if NERAMAC, being the registered proprietor for several agricultural GIs of the Northeast appoints an inspection mechanism for quality monitoring and there is no

¹⁰⁴ Giovannucci, Daniele & Josling, Timothy & Kerr, William & O’Connor, Bernard and Yeung, May T., *Guide to Geographical Indications: Linking Products and Their Origins (Summary)*, INTERNATIONAL TRADE CENTRE (2009), <https://ssrn.com/abstract=1736713>.

¹⁰⁵ Neha Raj, *Unlocking Potential: India looks to Reform Geographical Indications Law for Greater Impact*, PUNE NEWS (Oct. 1, 2024), <https://pune.news/government/unlocking-potential-india-looks-to-reform-geographical-indications-law-for-greater-impact-242383/>.

accountability for its functioning to any other party, specifically the GI Registry; how does one determine whether NERAMAC has indeed appointed such an inspection mechanism? In other words, it is the duty of registered proprietors to engage in quality control and they themselves are appointing bodies for quality control purposes. The function is theirs and so is the inspection body checking whether the function is performed or not.

This situation also highlights the GI Registry's inability to govern the authenticity of GI goods post-registration. Legally speaking, there is no strict accountability for producers to follow the quality standards, and there are no legal measures for an independent authority to conduct regular inspections of these quality standards, and even if there is, the failure to do so has no major ramifications.¹⁰⁶

The issue is not about what kind of body is applying for GI, as they all have the legitimacy to do so, but their functioning and corresponding roles and responsibilities. GI governance in India, from pre-registration to post-registration, lacks uniformity. Standardization of quality and proper post-registration quality control are the core aspects of good GI governance. One single registered proprietor managing all aspects of a GI post-registration in a way that represents the concerns of all genuine producers is a mammoth task.

The authors hereby propose that the intervention of a neutral agency at this point is paramount for the division of responsibilities, but no such agency exists to date. With the GI Registry located in Chennai, without any branches elsewhere in the country, and the roles and responsibilities of every other stakeholder defined; it would augur well for the registered proprietor to be divested of its responsibility of quality monitoring as it is already burdened with other responsibilities. Quality being a non-negotiable aspect of a GI need special attention and for this, an independent neutral body or agency would be suitable to fulfil this function. The EU has special bodies called "Control Bodies" and their main function is quality control monitoring.¹⁰⁷ Control by an External Body is recommended here. They perform no other function. Such a set-up would necessitate more funding but would be a wise step towards enhancing the value of GIs in the minds of consumers. Also, the GI Act does not clarify satisfactorily the powers and functions of registered proprietors and AUs. Both can take infringement actions, but exclusive use is restricted to AUs only. Roles

¹⁰⁶ Pai, *supra* note 67.

¹⁰⁷ David Thual et al., *Q&A Manual European Legislation on Geographical Indications*, IPKEY, <https://ipkey.eu/sites/default/files/legacy-ipkey-docs/qa-manual-european-legislation-on-gis-en.pdf>.

and responsibilities of registered proprietors on quality control aspects that would have a significant impact on producers' welfare by keeping infringements in check are glaringly missing. The approach of the Indian government toward GI governance is largely welfarist, and thus, a spate of schemes has been launched, keeping the GI producers at the forefront. A common GI logo was created under the aegis of the Department for the Promotion of Industry and Internal Trade ["**DPIT**"], which, despite detailed instructions on usage, lacks implementation.¹⁰⁸ Thus, unlike PDO and PGI labels used in the EU,¹⁰⁹ India's GI logo lacks consumer recognition due to its non-usage. Also, given the increasing significance of e-commerce and digital protection, it is essential that the amended Act includes provisions facilitating and regulating the online marketing of GI products.¹¹⁰

The analysis of the Indian experience has shown that there is a danger of vesting complete control upon state authorities as the same might lead to the monopolization of GIs, weakening the 'collective dimension' aspect mentioned earlier, and complete commercialization of GIs at the cost of excluding genuine producers, as their voices might be lost in the chaos of the supply chain trajectory. To mitigate the risk of inequitable distribution of benefits, many scholars argue for greater participation and eventual empowerment of producer communities to construct an enabling institutional environment for which necessary institutional frameworks are missing. A question arises- can there be transcendental set-up to provide the producers a meaningful voice in course of the GI negotiations with state involvement but without sidelining neutrality concerns that arise with the same?

With the highest level of state involvement, as seen, the Tea Board has been able to ensure a global reputation for Darjeeling tea GI. However, since many actors are involved in the supply chain, it is essential to ensure that benefits actually percolate down to the genuine producers at the grassroots level. Has such extensive state engagement ensured benefits to all the producers? A GI

¹⁰⁸ Ministry Of Commerce & Industry, Department For Promotion Of Industry And Internal Trade, *Guidelines For Permitting The Use Of Geographical Indication (Gi) Logo And Tagline*, WIPO, https://ipindia.gov.in/writeraddata/Portal/News/536_1_GI_Guideline_Finalised.Pdf.

¹⁰⁹ *Geographical Indications And Quality Schemes Explained*, EUROPEAN COMMISSION, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en.

¹¹⁰ *Strengthen Quality Control Mechanisms in GI-tagged Products: Experts to Govt*, OUTLOOK BUSINESS (Oct. 9, 2024), <https://economictimes.indiatimes.com/news/economy/policy/strengthen-quality-control-mechanisms-in-gi-tagged-products-experts-to-government/articleshow/114078183.cms?from=mdr#:~:text=Strengthen%20quality%20control%20mechanisms%20in%20GI%20tagged%20products%3A%20Experts%20to%20Government,-Agencies&text=Experts%20urge%20the%20government%20to,oversight%20body%2C%20and%20quality%20checks.>

cannot be said to be a success if the overall interests of all its producers are not secured. Tea Board has been able to script sufficient success for Darjeeling tea due to adequate financial resources¹¹¹ but as observed, that is not the full picture, as not all producer groups are equally placed. As seen, small scale producers' concerns need exclusive focus and active state support is unquestionable for their upliftment, till their status reaches a certain pedestal and they can negotiate for themselves. State involvement is needed for trust-building among all the stakeholders as it is not an easy task with opportunistic behavior rampant in markets.¹¹² And if there is a state agency already, they will need to engage actively with all the producers and coordinate with concerned state departments like labour, for instance. Can the state be entirely trusted in defining the common interests or best interests of all the producers of a GI product? Should the state continue to play an active role in the GI governance or be a facilitator/mediator, allowing producer associations to take complete charge with the passage of time?

Instead of the main applicant, the state body may function as the mediator, for instance, it can set up consultations, bringing all stakeholders together. For several GIs, state authorities play the role of a facilitator by launching schemes and helping producers with registration and financing, but the problem lies in low awareness among producers.¹¹³ State measures like One District One Produce [“**ODOP**”], Product Action Reports, buyer-seller meets, training of workers, etc., are laudable to take care of the same.¹¹⁴

Regarding the GI Registry, it is recommended that the GI Act should provide for a local institutional mechanism for GI management purposes. This is especially so for Part B registration of the GI Register that requires entering the details of the AUs; if some form of local filing can be facilitated, it would help facilitate swifter registration of AUs, who generally struggle with a lack of awareness and language-related problems. A single Registry in one corner of the country hampers accessibility between the producers and the authorities, resulting in delays and making the process expensive. A feasible solution would be the establishment of regional offices, making the registration process decentralized.¹¹⁵ Also, a state body with tentative nomenclature like National

¹¹¹ *Id.*

¹¹² Jupi Gogoi, *Proprietorship of GI in India with Special Focus on the State of Assam*, 25 JOURNAL OF INTELLECTUAL PROPERTY RIGHTS, 151 (2020).

¹¹³ Ranjana Sundaesan, *GI-Tags for Food and Drinks: A Complex Web of Determining Origins and Authenticity in India*, THE LOCATORE (Feb. 8, 2024), <https://thelocavore.in/2024/02/08/gi-tags-for-food-and-drinks-a-complex-web-of-determining-origins-and-authenticity-in-india/>.

¹¹⁴ *Centre takes proactive steps to promote the GI tagged products in the global market*, MINISTRY OF COMMERCE AND INDUSTRY, <https://pib.gov.in/PressReleasePage.aspx?PRID=1898020>.

¹¹⁵ Datta, *supra* note 58.

GI Board may be constituted that could assist producers/artisans in effective management of their GIs as despite the potential of over 10,000 GIs; India, as of 2025, has only 643 GIs registered and fares much lower when compared to countries like France and China.¹¹⁶ Rather than being a co-applicant, the Government is better placed in the role of enabling participation. For instance, the handicrafts sector of India is highly unorganized, necessitating state involvement. Regulated state intervention has been instrumental in the success of GIs like Pochampally Ikat and Chanderi fabric.¹¹⁷

The GI Registry must act in a neutral manner while reviewing GI applications with consultative groups. They must establish and function on clear guidelines necessitating some form of mandatory representativeness of producers to be more democratic in their functioning. Producers unifying themselves to get a GI registered would be preferable and ideal, and such a measure would bring the Indian GI regime closer to the producer-led model of GI governance, at least at the grassroots level.

In India, however, even when GIs have been registered, producer groups or state proprietors are largely seen to be inactive. The authors propose two ideal situations. First, the GI Registry can set a mandate that some form of active producer association is a must for the registration process to be initiated, and the state can join as a co-applicant/facilitator. Second, after the GI registration, the state proprietors can facilitate the formation of an association of producers (if not already in existence), take measures to empower them, and eventually transfer the responsibility to such an association.

GIs are largely public goods and capture the spirit of cooperative entrepreneurship; thus, they can never be either the monopoly of the state or producer associations. They work on a delicate balance between the two. For successful GIs, equitable participation among local producers and the state is required in all GI-related aspects.

V. CONCLUSION

GIs are public goods and meant for public good, symbolizing shared heritage and have the power of differentiation and to command premiums. Thus, they are exclusive and ubiquitous forms of

¹¹⁶ *Govt proposes to amend Geographical Indications law, seeks comments*, BUSINESS STANDARD (Oct. 1, 2024) https://www.business-standard.com/economy/news/govt-proposes-to-amend-geographical-indications-law-seeks-comments-124100100750_1.html.

¹¹⁷ Das, *supra* note 87.

IP, having a network of stakeholders in their management. Thus, GI good governance necessitates a complete reorganization of the supply chain to adhere to product quality standards and ensure that benefits percolate down to all alike in the supply chain, the producer communities in particular. For smooth coordination, trust-building among all stakeholders is of paramount importance.¹¹⁸ State involvement in GI management is established from the fact that GIs correspond mainly to geographical place names that are under the control of the state, and it being public goods, it becomes the duty of the state to preserve the shared heritage and towards that, state as a registered proprietor has a huge responsibility towards producer communities.¹¹⁹

In developing countries like India, it is difficult for local producers of GI products in rural areas to understand or even have access to the GI mechanism necessitating state penetration to uplift the local producers. Thus, the legitimacy of state involvement cannot be denied owing to the low level of producer awareness and activeness. However, a direct involvement of the state is not proposed only as the role of the state must not be mere handholding but allowing enough space for producers to flourish as a community. The Indian experience has revealed a new objective for the protection of GIs: the protection of the national identity of a country conferring the GI Act and the status of a welfare legislation through the ownership of the rights conferred to the state. Undoubtedly, this requires state support, but GI is mainly about the welfare of producers for which this community must be offered space at the forefront - a meaningful platform to voice their concerns.

With state involvement in GI governance, the question of monopolization of GIs arises along with unsatisfactory representation of interests of producers, but as established, state involvement is inevitable for a developing economy like India. Depending on which GI objective is in focus, the state's involvement needs to be assessed accordingly. For instance, if promotion and brand building are needed, then inspection and quality control checks need to be strengthened, for which state involvement is undeniable as it is a resource-intensive exercise. On the other hand, if community-level changes like employment or better revenues or deciding on product specifications are the focus, then producers must be included in the GI governance model, and it is the role of the registered proprietor to do so.

¹¹⁸ Sunil Sudhakar Varnekar & Dr. Upankar Chutia, *Critical analysis on the implementing of the geographical indications Act in handloom sector*, 2 INTERNATIONAL JOURNAL OF LAW JUSTICE AND JURISPRUDENCE 107-111 (2022).

¹¹⁹ Marie-Vivien, *supra* note 63.

A perfect combination of globalization and localization, the Indian GI regime is a classic case of 'glocalization'; a fusion with global and local features reflected by means of its performance so far. For a subcontinent-like country like India, a primarily producer-driven approach at the grassroots with necessary statal support is qualified with sui generis potential to secure the object and purpose of the GI-registered goods, meant to market the public goods for public good; for those producers in the grassroots in particular whose intellectual labour culminates into the material commodity with endorsement of the GI Registry.