

# STRATEGIES FOR GEOGRAPHICAL INDICATIONS PROTECTION: TAKEAWAYS FROM INDIA

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## ABSTRACT

*The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GIGA) embodies the availability of both civil and criminal remedies in the scenario of infringements. However, multiple difficulties hinder the effective enforcement of the legislation; for instance, Section 50(4) of the GIGA stipulates that the complaints have to be filed before an officer in the rank of Deputy Superintendent of Police (DSP) or equivalent. This is a practical concern as it is relatively difficult for local farmers and artisans to have easy access to an officer of such a high rank. Besides that, Section 66 of the Act, which provides that suits for infringement have to be filed in a court not inferior to that of a District Court, is also troubling, as most of the GIs in India are located in rural areas, which in most cases are away from the district headquarters. Travelling this far for conducting the litigation and hiring a lawyer of the District Court for that purpose is an additional financial burden for most of the producers. Even after two decades of the enactment of the GIGA, there is still an evident lack of awareness about the law among the public. A comprehensive GI policy covering aspects such as mapping potential products, speedy registration process, post-registration monitoring, and brand building is yet to be developed. In light of these issues relating to enforcement, this research paper examines some of the positive measures adopted in foreign jurisdictions that may be imbibed in India for better GI protection. The nature of GI protection in jurisdictions such as the European Union, France, the United States, and China is comparatively analyzed with the Indian situation to suggest possible takeaways for India.*

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## INTRODUCTION

The history of legal protection to products originating from specific areas has emanated during the 12<sup>th</sup> century in Europe.<sup>1</sup> The purpose of such earlier laws was to protect domestic products from unauthorized selling. Most of the previous legislation were either consumer protection laws or penal statutes. The concept of *Indication of Source* (IOS) and *Appellation of Origin* (AOO) for the protection of products from specific geographic areas have evolved during the “*Paris Convention for the Protection of Industrial Property, 1883*”.<sup>2</sup> The IOS is only a primary source indicator. The quality requirement is not stringent in the case of IOS. However, AOO is a higher standard of protection as compared to IOS.<sup>3</sup> The efforts for protecting goods originating from specific geographical areas have a long history. However, the legal framework of *Geographical Indications* (GI) protection only developed in recent history. The “*Agreement on Trade-Related Aspects of Intellectual Property Rights*” (TRIPS) of the *World Trade Organization* (WTO) recognized GI as one of the seven categories of protected intellectual property rights.<sup>4</sup> According to *Article 22* of the TRIPS Agreement,

“Geographical Indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

As GI protection is concerned, the TRIPS Agreement has stipulated a *minimum standard of protection*, and the member countries are free to adopt GI protection in a way that better suits the domestic interests.<sup>5</sup> The post-TRIPS era has seen different Member countries adopting different standards regarding GI protection.<sup>6</sup> The *European Union* (EU) has adopted a stringent GI regime, whereas the United States has adopted a trademark-centric approach. Many developing countries in Asia, including India, have adopted a *sui generis* system.<sup>7</sup>

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<sup>1</sup> MICHAEL BLAKENEY, *THE PROTECTION OF GEOGRAPHICAL INDICATIONS: LAW AND PRACTICE* 4 (2014).

<sup>2</sup> BERNARD O'CONNOR, *THE LAW OF GEOGRAPHICAL INDICATIONS* 23 (3d ed. 2004).

<sup>3</sup> *Frequently Asked Questions: Geographical Indications*, WIPO, [http://www.wipo.int/geo\\_indications/en/faq\\_geographicalindications.html](http://www.wipo.int/geo_indications/en/faq_geographicalindications.html) (last visited Dec. 19, 2020).

<sup>4</sup> Tunisia L. Staten, *Geographical Indications Protection under the TRIPS Agreement: Uniformity not Extension*, 87 J. PAT. & TRADEMARK OFF. SOC'Y. 221, 222-223 (2005).

<sup>5</sup> Felix Addor and Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5 J. WORLD INTELL. PROP. 865, 866 (2002).

<sup>6</sup> Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPS: Old Debate or New Opportunity*, 10 MARQ. INTELL. PROP. L. REV. 181, 195 (2006).

<sup>7</sup> Tim Josling, *The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict*, 57.3 J. AGRIC. ECON. 337, 338 (2006).

In light of these issues relating to enforcement, the research paper is analyzing the enforcement of GI law in some foreign jurisdictions and examines the possible takeaways for India. The first part of the paper analyses the TRIPS-plus characteristics of the GI regime of India. The difference of the Indian GI regime from the EU advocated TRIPS-plus standards, and the provisions related to enforcement of the “*Geographical Indications of Goods (Registration and Protection) Act, 1999*” (GIGA) are examined. In the second part, the GI law implementation in different jurisdictions such as the European Union, France, the United States, and China are comparatively analyzed with the Indian position. Since the TRIPS agreement mandates only a *minimum GI protection standard*, there is a considerable difference in the implementation. Member States adopt the GI regime according to the demands of their socio-economic and cultural needs. The research paper attempts to devise the possible takeaways for India from the experiences in the other jurisdictions.

## I. INDIA AND TRIPS-PLUS GI STANDARDS

Both India and the EU have adopted TRIPS-plus standards of GI protection. In India, a comprehensive *sui generis* legislation, namely the “*Geographical Indications of Goods (Registration and Protection) Act, 1999*,” is enacted in compliance with the TRIPS Agreement. However, the nature of GI protection in India is different from that of the EU. For example, *additional protection for wines and spirits* is one of the EU GI regime's major highlights. *Article 23* of the TRIPS Agreement, which provides *additional protection*, reflects strong pressure from the EU.<sup>8</sup> However, In India, more focus was given to the protection of agricultural and handicraft products since they are beneficial for the indigenous farmers and artisans.<sup>9</sup> To ensure equal treatment to all specific GIs, it was necessary to extend the additional protection status to them. Therefore, as per GIGA 1999, goods other than wines and spirits can also seek *additional protection* under *Section 22(2)*.<sup>10</sup> As per the provisions of the Indian law on GIs, *additional protection* is not granted automatically. According to *Rule 77* of the “*Geographical Indications of Goods (Registration and Protection) Rules, 2002*”, to be granted additional protections, the applicant needs to apply on *Form no. GI-9* and deposit a prescribed

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<sup>8</sup> Stacy D. Goldberg, *Who will Raise the White Flag - The Battle between the United States and the European Union over the Protection of Geographical Indications*, 22 U. PA. J. INT'L ECON. L. 107, 117 (2001).

<sup>9</sup> Delphine Marie-Vivien, *The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India*, 13.2 J. WORLD INTELL. PROP. 121, 124 (2010).

<sup>10</sup> S. K. Soam, *Analysis of Prospective Geographical Indications of India*, 8 J. WORLD INTELL. PROP. 679, 682 (2005).

fee of Rs. 25,000/-, which is five times greater than the registration fee of a typical GI application.

## II. DOMESTIC BATTLE AGAINST INFRINGEMENT

One of the primary goals of any legislation on GI is to prevent infringement of the protected products. According to *Rule 2(a)* of the “*Intellectual Property Rights (Imported Goods) Enforcement Rules 2007*”, “*Goods infringing intellectual property rights*” are defined as:

“Goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorised to do so by the right holder.”<sup>11</sup>

The provision is squarely applicable to infringement of the rights of GI holders. When we look into GIGA 1999 language, we can see that GI is protected from infringement by legal remedies. Both civil, as well as criminal remedies, are available to the right holders.

### A. Criminal Remedies

The GIGA contains penal provisions relating to the infringement and misappropriation of registered GIs. Some of the offenses under the *sui generis* law are:

*Falsifying and falsely applying geographical indications*<sup>12</sup>

*For selling goods to which false geographical is applied*<sup>13</sup>

*Falsely representing a geographical indication as registered*<sup>14</sup>

*Improperly describing a place of business as connected with the Geographical Indications Registry*<sup>15</sup>

*Falsification of entries in the Register*<sup>16</sup>

*Offenses by the companies*<sup>17</sup>

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<sup>11</sup> The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, Rule 2(a).

<sup>12</sup> The Geographical Indications of Goods (Registration and Protection), 1999, § 38(1) & 38(2).

<sup>13</sup> *Id.* at § 40.

<sup>14</sup> *Id.* at § 42.

<sup>15</sup> *Id.* at § 43.

<sup>16</sup> *Id.* at § 44.

<sup>17</sup> *Id.* at § 49.

*Abetment in India of acts done out of India*<sup>18</sup>

*Enhanced penalty on second or subsequent conviction.*<sup>19</sup>

Unlike most other IP rights, GI rights are associated with public property rights, and hence it is important to have penal provisions to deter infringement. The GIGA is one among the very few IP legislations in India that provides for criminal remedies in the event of an infringement.

### B. Civil Remedies

The holders of registered GIs may initiate either *infringement* or *passing off* proceedings against an infringer. The initial forum of such litigation should be a Court not subordinate to the District Court having jurisdiction.<sup>20</sup> In addition to a suit for infringement, the *sui generis* system offers the possibility of filing a suit for *passing off* arising out of the use of any GI which is “*identical with or deceptively similar*” to the GI, whether registered or unregistered.<sup>21</sup>

## III. ISSUES RELATED TO ENFORCEMENT

As the GIGA 1999 is comparatively new IP legislation in India. It is exposed to the usual beginner’s troubles when it comes to enforcement. Though the law is worded into a statute, the real challenge begins when it is attempted to implement and enforce the same. Some of the issues concerning the enforcement of the legislation are discussed below.

### A. The Authority to Which the Complaint is to be Filed

As per *Section 50(4)* of the GIGA 1999,

“Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he satisfied that any of the offences referred to in the Geographical Indications of Goods (Registration and Protection) Act 1999, has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be: Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar

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<sup>18</sup> *Id.* at § 54.

<sup>19</sup> *Id.* at § 41.

<sup>20</sup> *Id.* at § 66.

<sup>21</sup> *Id.* at § 66.

on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.”<sup>22</sup>

As widely quoted in India, GI is a poor man’s intellectual property. The principal beneficiaries of a GI registration are the farmers and artisans associated with the particular goods. Considering the social realities and practicality issues, it seems very difficult for the *Registered Proprietor* or the *Authorised User* to have easy access to an officer in the rank of *Deputy Superintendent of Police (DSP)* or equivalent in person and lodge a complaint. In many situations, the GI Registry facilitates the lodging of complaints to the DSP-ranked officer on behalf of the GI holder. This creates an additional burden for the GI Registry, which is already facing a scarcity of human resources.

### **B. Forum of Litigation and Challenges to Producers**

Under *Section 66* of the GIGA 1999, suit for infringement has to be filed in a court not inferior to a District Court having jurisdiction.<sup>23</sup> However, in reality, most of the GIs in India are located in rural areas and local settlements, which in most cases are away from the district headquarters. This situation compels the *Registered Proprietor* to travel quite far for conducting the litigation. In addition to that, hiring a lawyer of the District Court for this purpose is also a financial burden for the proprietors who are socially, economically, and politically not that sound in most cases.

### **C. Visibility of GI Laws**

Even though the GIGA 1999 was enacted almost one and half decades back, there are very few judgments where the courts tried to interpret the provisions. There are many instances where the court pronounced judgments by totally disregarding the 1999 Act. The Kerala High Court judgment in the case of “*Murugan v. State of Kerala*” is a typical example.<sup>24</sup> In this case, the High Court ordered to return to the petitioner the infringed goods seized by the Police from a complaint of the GI holder of *Aranmula Kannadi*. By a surprising judgment, the High Court held that there is nothing to show that the manufacture of *Aranmula Kannadi* is the monopoly of the GI holder (*Vishwa Brahmana Aranmula Metal Mirror Nirman Society*) as they don’t have an exclusive trademark over the product. The judgment of the High Court was made

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<sup>22</sup> *Id.* at § 50 (4).

<sup>23</sup> *Id.* at § 66.

<sup>24</sup> *Murugan v. State of Kerala*, Cri. M.C. No. 7485 of 2015.

without considering the provisions of GIGA 1999. This shows the need for proper awareness about the legislation's purpose and nature even to the country's higher judiciary. The number of GI cases filed before the *Intellectual Property Appellate Board* (IPAB) is also relatively negligible.

#### **D. Need for a National GI Policy**

Even though the history of GI laws dates back to the early 12<sup>th</sup> century, India's *sui generis* legislation is still in its nascent stages.<sup>25</sup> The GIGA 1999 was enacted, leaving behind many ambiguities and confusions concerning the enforcement.<sup>26</sup> However, the unfortunate part is that such confusions were not settled even after two decades of the functioning of the legislation. Lack of awareness about the law and the financial burden of litigation are reasons for the GI implementation's stagnant nature. The Government needs to emphasize institutionalizing the GI mechanism by conducting awareness programs and registering potential products. Adopting a domestic policy for GI protection, promotion, and exporting is to be seen as essential.<sup>27</sup> Mapping of the potential GIs, expenses associated with post-registration monitoring, marketing, and conflict resolution are to be covered under this policy framework,

### **IV. INDIAN GIs IN FOREIGN JURISDICTIONS**

For the adequate protection of GIs, it is necessary that the same is protected beyond boundaries across the globe. The protection of indigenous GIs in the international market is always perceived as a concern by developing countries.<sup>28</sup> The *Basmati Rice* and *Darjeeling Tea* counterfeiting incidents unfolded the need for more effectiveness in the protection of Indian products in foreign jurisdictions.<sup>29</sup> For enabling protection in a foreign country's market, it is necessary to get the product recognized by the law of that foreign country as a product originating from India.

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<sup>25</sup> Soumya Vinayan, *Intellectual Property Rights and the Handloom Sector: Challenges in Implementation of Geographical Indications Act*, 17 J. INTELL. PROP. RTS. 55, 55-56 (2012).

<sup>26</sup> VANDANA SINGH, *THE LAW OF GEOGRAPHICAL INDICATIONS - RISING ABOVE THE HORIZON* 193 (2017).

<sup>27</sup> Naresh Kumar Vats, *Geographical Indication - The Factors of Rural Development and Strengthening Economy*, 21 J. INTELL. PROP. RTS. 348, 352 (2016).

<sup>28</sup> Kasturi Das, *International Protection of India's Geographical Indications with Special Reference to "Darjeeling" tea*, 9(5) J. WORLD INTELL. PROP. 459, 485 (2006).

<sup>29</sup> *Id.* at 461.

However, under *Article 1(1)* of the TRIPS Agreement, deciding the proper channel for GI protection is up to each Member State. As a result of this flexibility, which is being offered by the TRIPS Agreement, different Member States have adopted different approaches for GI protection. This situation is challenging for developing countries like India, as they have to seek separate protection in different countries, relying on different procedures. Such a process is difficult because of the complexities of the procedures involved and the expenses associated with it.<sup>30</sup>

The Member States with a *sui generis* system of legal protection to GIs demands more effort from other countries who wish to register their products as GI in that particular Member State's market.<sup>31</sup> The applicant States are required to provide more information to States with the *sui generis* system for registration of GIs. This information includes the details as to the process of manufacture, geographical origin, uniqueness, etc. The most challenging part is that this information is required to be provided in that particular Member State's language and by following their legal procedures. This is a strenuous task and involves additional expenses also.

## V. GI PROTECTION MECHANISM IN OTHER JURISDICTIONS

The *sui generis* domestic legislation for GI protection is not available in most jurisdictions. The majority of the States have taken the approach of protecting GI through a system of TM registration.<sup>32</sup> However, TM registration generally does not favor permitting the registration of a name with geographical attributes. Therefore, GIs are generally protected in the form of *collective marks* or *certification marks*. In some jurisdictions, both TM as well as GI protection is available parallel to each other.<sup>33</sup>

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<sup>30</sup> Daniel Gervais, *Irreconcilable Differences - The Geneva Act of the Lisbon Agreement and the Common Law*, 53 HOUS. L. REV. 339, 340 (2015).

<sup>31</sup> Gail Evans and Michael Blakeney, *The Protection of Geographical Indications after Doha: Quo Vadis?*, 9(3) J. INT'L. ECON. L. 575, 579 (2006).

<sup>32</sup> Brian Rose, *No More Whining about Geographical Indications: Assessing the 2005 Agreement between the United States and the European Community on the Trade in Wine*, 29 HOUS. J. INT'L. L. 731, 733 (2006).

<sup>33</sup> Dev Gangjee, *Quibbling Siblings: Conflicts between Trademarks and Geographical Indications*, 82 CHI.-KENT L. REV. 1253, 1259 (2007).



In addition to the *sui generis* system and TM protection, there are other approaches also adopted by the different WTO Member States to provide GI protection. Examples of such approaches are protection afforded through *unfair competition* and *consumer protection laws*. These particular approaches also prove to be too expensive for applicant States. The expenses associated with the litigation process for protection are too unbearable as GI is protected as a community right in developing countries like India.<sup>34</sup>

### A. The European Union

The EU is always viewed as a strong advocate of the protection of geographical origin-based products, beginning from the Uruguay Round of the TRIPS negotiations. The first EU regulation made to protect GI was the “*Council Regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs*”, which was modified many times afterward in a span of two and a half decades. Until 1992, most of the European countries protected unique products through domestic laws. The “*Cassis de Dijon judgment*,” which provided that products legally produced and marketed in one Member State, could be marketed in another, paved the way for discussions on the need for an EU regulation.<sup>35</sup> As a result, *Council Regulation 2081/92* was adopted. In addition to that, there is a separate set of regulations that govern the GIs for wines and spirits.

Currently, four kinds of goods can be protected under EU quality schemes:

1. *Wines (Regulation 1308/2013)*
2. *Aromatised wines (Regulation 251/2014)*
3. *Spirit drinks (Regulation 110/2008)*
4. *Agricultural products and foodstuffs (Regulation 1151/2012).*<sup>36</sup>

As of December 2020, 3304 GIs are registered in the EU.<sup>37</sup> The number of registrations is very high compared to the 370 registrations made until the same time in India.<sup>38</sup> Of the 3304 registrations, 1616 are wines, 1441 are in the food category, 242 are spirits, and 5 are aromatised wines.<sup>39</sup> The EU mechanism is highly successful not only at identifying and

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<sup>34</sup> VANDANA, *supra* note 12 at 193.

<sup>35</sup> Case C-120/78, *Rewe-Zentral v. Bundesmonopolverwaltung Fur Brantwein*, 1979 E.C.R. 649.

<sup>36</sup> Yves Van Couter & Florence d'Ath, *Protecting the Origin of Foodstuffs in the European Union*, 1 EUR. FOOD & FEED L. REV. 290, 291-292 (2016).

<sup>37</sup> GI VIEW, <https://www.tmdn.org/giview/gi/search> (last visited Dec. 20, 2020).

<sup>38</sup> INTELLECTUAL PROPERTY INDIA, [http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI\\_Application\\_Register\\_10-09-2019.pdf](http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf) (last visited Dec. 21, 2020).

<sup>39</sup> *Supra* note 37.

registering products but also at labelling and marketing aspects. Presently, the EU grants GI protection for agriculture-related products. However, deliberations are also going around as to the need for extending the protection to non-agricultural products.<sup>40</sup> The *EU Green Paper* published in 2014 on the *extension of GI protection* stressed the possible problems which may pop up in a scenario where *additional protection to non-agricultural products* is granted.<sup>41</sup>

Regulation 1151/2012, the current EU legal regime on GIs, provides three schemes of protection to GIs and Traditional Specialities. They are;

1. *Protected Designation of Origin (PDO)*
2. *Protected Geographical Indication (PGI)*
3. *Traditional Specialities Guaranteed (TSG)*

The PDO and PGI are granted logos that represent the specific link of the product to the place of origin. In the case of PDOs, the product-place link needs to be stronger than PGIs. In the case of TSG, the link with the place is not necessary. TSG protects foodstuffs with some special character.<sup>42</sup> As of December 2020, 1835 PDOs, 1227 PGIs, and 242 GIs in the spirit drink category are registered in the EU.<sup>43</sup> The quality labels associated with the products are important factors influencing consumer choices. The logo associated with each of the quality schemes serves almost similar tasks to a trademark logo among consumers' minds.

When it comes to enforcement of the Regulation, different EU Member States have taken different approaches considering their market demands and economic conditions. In this regard, *Article 13* of the Regulation is significant. *Article 13* of the Regulation stipulates that the Member States should provide remedies if there is an infringement by indication of third parties. This provision keeps a check on cross-border infringements to a certain extent. The high reputation associated with the EU quality schemes is also beneficial to the customers. The

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<sup>40</sup> William New, *EU Agrees to Accede to Controversial WIPO Agreement Raising GI Protection*, INTELLECTUAL PROPERTY WATCH (Dec. 21, 2020, 11:30 AM), <https://www.ip-watch.org/2019/03/20/eu-agrees-to-accede-to-controversial-wipo-agreement-raising-gi-protection/>.

<sup>41</sup> Monika Ermert, *EU Parliament Considers Extension of GI Protection to Non-Agricultural Products*, INTELLECTUAL PROPERTY WATCH (Dec. 21, 2020, 5:30 PM), <https://www.ip-watch.org/2015/05/08/eu-parliament-considers-extension-of-gi-protection-to-non-agricultural-products/>.

<sup>42</sup> Flora Southey, *GI protection Post-Brexit: What Food and Drink Producers Need to Know*, FOOD NAVIGATOR (Dec. 22, 2020, 9:00 AM), <https://www.foodnavigator.com/Article/2020/10/16/GI-protection-post-Brexit-What-food-and-drink-producers-need-to-know>.

<sup>43</sup> *Supra* note 37.

success of EU measures in bringing desired revenues to the producers is also a result of marketing and awareness regarding the products' quality attributes.<sup>44</sup>

The EU always envisaged a very high standard of GI protection as opposed to the US position of considering GI as a subset of trademarks. Since the GI chapter under the TRIPS agreement was formulated as a compromise formula, only a minimum standard of protection was accorded.<sup>45</sup> Therefore, in the post-TRIPS period, the EU actively pursued to bring the desired standard of GI protection through free trade agreements.<sup>46</sup> The “*European Union - South Korea Free Trade Agreement*” (KOREU), “*European Union-Singapore Free Trade Agreement*”(EUSFTA), “*European Union-Vietnam Free Trade Agreement*” (EVFTA), and “*Japan-European Union Economic Partnership Agreement*” (JEFTA) are some of the EU FTAs with TRIPS-Plus GI standards. The EU - China bilateral agreement, exclusively dealing with GIs, was another considerable trade deal signed on September 14, 2020.<sup>47</sup> As per this landmark trade deal, a list of hundred GIs of EU will get protection in China, and likewise, hundred Chinese GIs will get protection in the EU.<sup>48</sup> It is also agreed that the trade deal will protect a further 175 GIs of each contracting party after four years.

The EU action for promoting GI through FTAs is something that India can also think of adopting. In the absence of a successful international registration mechanism, the free trade route seems to be an alternative for ensuring GI protection in international markets.

## **B. France**

France was at the forefront of protecting origin-specific goods, and the history of such protection dates back to the 12<sup>th</sup> century. There were efforts even during the 12<sup>th</sup> century to protect products like *Roquefort Cheese*.<sup>49</sup> The “*Law for the protection of the place of origin*” was passed on 6<sup>th</sup> May 1919. The 1919 law was the first-ever comprehensive French statute

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<sup>44</sup> Efthalia Dimara & Dimitris Skuras, *Consumer Demand for Informative Labeling of Quality Food and Drink Products: a European Union Case Study*, 22(2) J. CONSUMER MKTG. 90, 90-92 (2005).

<sup>45</sup> Tim Engelhardt, *Geographical Indications under Recent EU Trade Agreement*, 46 INT'L. REV. INTELL. PROP. COMPETITION L. 781, 781-782 (2015).

<sup>46</sup> *Id.* at 782.

<sup>47</sup> *China's Commerce Ministry calls Geographical Indications Agreement with EU a Milestone*, GLOBAL TIMES, (Dec. 22, 2020, 10:00 AM), <https://www.globaltimes.cn/content/1200910.shtml>.

<sup>48</sup> HUAXIA, *CHINA-EU AGREEMENT ON GEOGRAPHICAL INDICATIONS A MILESTONE: COMMERCE MINISTRY*, XIANHUANET, (DEC. 22, 2020, 11.00 AM), [HTTP://WWW.XINHUANET.COM/ENGLISH/2019-11/07/c\\_138537092.HTM](http://www.xinhuanet.com/english/2019-11/07/c_138537092.htm).

<sup>49</sup> Sarah Bowen, *Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy*, 75(2) RURAL SOC. SOC'Y 209, 218 (2010).

for the protection of products originating from specific places.<sup>50</sup> Products originating from particular areas are protected in France through mechanisms such as *Indication of Source* (IOS), *Appellation of Origin* (AOO), and *Geographical Indication* (GI).<sup>51</sup>

On 30<sup>th</sup> July 1935, a new law was enacted, which established the “*National Institute of Appellations of Origin for Wines and Spirits*” (INAO).<sup>52</sup> INAO predominantly includes producers who represent the interest of the community behind the process of manufacture of the products. The production of wines of superior quality was made one of the perceived goals. The very functioning of INAO is an example of State participation in protecting GIs as it operates in the public sector. The body is under the Ministry of Agriculture's supervision and includes representatives of industry professionals engaged in production, qualified experts, and members of official departments and agencies.<sup>53</sup>

In 2006, some significant changes were brought in as GI protection in Europe is concerned. Both the *EU Regulation 1992* and the French legal framework were amended. The most significant change was regarding the role of the State in the protection and promotion of GIs. The role of the State was made limited, with more roles being invested with the producers. This was seen as an appropriate measure considering the organizational strength of the producers in Europe.<sup>54</sup> The integration of different players into a single platform was the basic contribution made by INAO. It comprises representatives of industry professionals, consumers, experts, and officials from the Government and NGOs. Therefore, the *French Regulation of 2016* has legitimized the organization of the producers, which is an organization for the defense and management of the GI as provided in *Article L. 642-17 of the Code Rural*.<sup>55</sup> The English translation of the provision reads as follows:

“The defence and management of a product benefiting from a red label, an appellation of origin, a geographical indication or a guaranteed traditional speciality is ensured by an organization with legal personality.

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<sup>50</sup> Dev Gangjee, *RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS* 102 (2012).

<sup>51</sup> Anne Laumonier, *A French point of view on geographical indications*, MINISTRY OF AGRICULTURE AND FOOD FRANCE, [https://archive.moag.gov.il/yhidotmisrad/research\\_economy\\_strategy/publication/2018/Documents/Laumonier\\_GI\\_policy\\_enpardv.pdf](https://archive.moag.gov.il/yhidotmisrad/research_economy_strategy/publication/2018/Documents/Laumonier_GI_policy_enpardv.pdf) (last visited Dec. 23, 2020).

<sup>52</sup> Britt Karlsson, *Congratulations INAO, 80 Years This Year!*, BK WINE MAGAZINE (Dec. 24, 2020, 7:30 AM), <https://www.bkwine.com/news/congratulations-inao-80-years/>.

<sup>53</sup> DELPHINE, *supra* note 9, at 124.

<sup>54</sup> Delphine Marie-Vivien, et al., *Are French Geographical Indications Losing their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France*, 98 *WORLD DEV.* 25, 26-27 (2017).

<sup>55</sup> CODE RURAL ET DE LA PÊCHE MARITIME [RURAL AND SEA FISHING CODE] art. L. 642-17 (Fr.).

A single organization can ensure the defence and management of several products.

The organization seeks recognition as a defence and management organization within the meaning of the provisions of this title when requesting the attribution of the sign of quality and origin to the product for which it intends to ensure the defence and management.”

The legitimization of the organization has further strengthened the position of producers. The socio-economic conditions of producers in France require only limited interference from the Government side. In developing countries like India, the State has a larger role to play, considering the producer’s socio-economic backwardness. However, the successful establishment of a producer’s association can be emulated in India as well.

### C. The United States

The US - European debate regarding the nature of GI protection has a long history. The European countries in general adopted a continental-based system of GIs, which has a public approach. On the other hand, the US adopted a common-law system of certification trademarks with a private approach.<sup>56</sup> The European immigrants to the US in the 17<sup>th</sup> and 18<sup>th</sup> centuries were instrumental in bringing with them European methods and styles of manufacture, some of which were unique to specific regions and products.<sup>57</sup> The European immigrants brought with them grape varieties and traditional methods of winemaking from their home countries. Thus, European geographical names have been used in the US for a very long time.<sup>58</sup> As a result of this long usage without adhering to any specific geography, such names had lost their geographical identity and served primarily to describe certain styles and types of the original products to the American consumers.<sup>59</sup>

The US was never supportive of the idea of protecting GIs as a specific intellectual property. GI protection was perceived as a subset of the trademark regime; it is under the ambit of certification marks, collective marks, regular trademarks, or common law trademarks.<sup>60</sup> During

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<sup>56</sup> Eva Gutierrez, *Geographical Indicators: A Unique European Perspective On Intellectual Property*, 29 HASTINGS INT’L & COMP. L. REV. 29, 30-31 (2005).

<sup>57</sup> VANDANA, *supra* note 26, at 189.

<sup>58</sup> BRIAN, *supra* note 32, at 734.

<sup>59</sup> Daniele Giovannucci, et al., *Defining and Marketing “Local” Foods: Geographical Indications for US Products*, 13(2) J. WORLD INTELL. PROP. 94, 99-100 (2010).

<sup>60</sup> Paul J Heald, *Trademarks and Geographical Indications: Exploring the Contours of the TRIPS Agreement*, 29 VAND J. TRANSNAT’L. L. 635, 637-638 (1996).

the Uruguay round negotiations, which were primarily carried out between the US and the EU to the near exclusion of all the other countries,<sup>61</sup> the US did not mention anything about the need to protect GI as an IP under the TRIPS framework.<sup>62</sup> This is reflective of the country's inclination towards a private ownership-centric system rather than community ownership with a State support mechanism.<sup>63</sup> However, the US wanted to protect domestic GIs through other legal frameworks for the welfare of indigenous artisans and farmers. Therefore, GIs are protected in the US through many statutes instead of a *sui generis* system. Predominantly, GIs are protected by trademark law.<sup>64</sup>

The “*Lanham (Trademark) Act of 1946*”, as amended in 1999, has the most significant impact on GIs. The “*US Federal Alcohol Administration Act*” (*FAA Act*) and “*Federal Bureau of Alcohol Tobacco, Firearms and Explosives*” (*BATFE*) have provisions relating to the protection of wines and spirits. The *Lanham (Trademark) Act* was initially conceived as a federal statute dealing exclusively with trademarks. Comprehensive revisions to the Lanham Act took effect in November 1989, and policymakers have since amended the Act in tune with trade negotiations.<sup>65</sup> The latest amendment was made in 1999, which eventually made the statute compliant with the TRIPS Agreement.

The US trademark law has recognized that it is necessary to give rights to those who use words, names, symbols, or devices to identify their goods or services. The legal framework does not afford protection to GIs that do not provide such identifications unless they acquire a secondary meaning sufficient to qualify for trademark or service mark protection.<sup>66</sup> Most of the GIs in the US are protected as either certification marks or collective marks. Both are forms of communal property, controlled by, respectively, a certifying body or collective body. In either case, the mark may be used by multiple parties within the community, subject to the certifying or collective body's control.<sup>67</sup>

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<sup>61</sup> SOAM, *supra* note 10, at 706-710.

<sup>62</sup> DANIELE, *supra* note 59, at 99.

<sup>63</sup> Frances G Zacher, *Pass the Parmesan: Geographic Indications in the United States and the European Union- Can there be Compromise*, 19 EMORY INT'L. L. REV. 427, 429-433 (2005).

<sup>64</sup> Marsha A. Echols, *Food Safety Regulation in the European Union and the United States: Different Cultures, Different Laws*, 4 COLUM. J. EUR. L. 525, 527-528 (1998).

<sup>65</sup> Christine Haight Farley, *Conflicts Between US Law and International Treaties Concerning Geographical Indications*, 22 WHITTIER L. REV. 73, 75-76 (2000).

<sup>66</sup> *Id.* at 75-76.

<sup>67</sup> DANIELE, *supra* note 58, at 95-96.

For historical and cultural reasons, a *sui generis* GI system never received much acceptance in the mainstream. Unlike the US, both the EU and India have a long list of unique products with rich historical underpinnings. It was ideal for the US to go with a trademark regime instead of a specific GI system in this context.

#### **D. China**

Although China has many products known by its place of origin, such as “*Jinhua ham*,” “*Fuling pickled mustard tuber*,” and “*Huangyan tangerines*,” the country was slow to adopt the GI regime.<sup>68</sup> China has a unique GI protection system, where the same is protected through three systems under dual protection mechanisms.<sup>69</sup> On the one hand, GIs are protected in China as collective or certification marks under the Trademark Law through the system run by the “*State Administration of Industry and Commerce*” (SAIC).<sup>70</sup> On the other hand, China implements GI-specific rules to protect products related to GIs through the systems operated by the “*General Administration of Quality Supervision, Inspection and Quarantine*” (AQSI) and the *Ministry of Agriculture (MOA)*.<sup>71</sup> There are also separate registration mechanisms under each of these systems.

The Chinese Trademark Law defines a GI as:

“An indication identifying a good as originating in a specific area, where a given quality, reputation or other characteristic of the good is essentially attributable to the natural or human factors of the area.”<sup>72</sup>

As per the Trademark statute, GIs can be registered and protected as collective marks or certification marks with the Trademark Office. This mechanism is very much similar to the trademark-centric approaches of jurisdictions like the US and Australia. Interestingly, China also has a budding *sui generis* mechanism operated under AQSI and MOA with a separate registration option. The AQSI system ensures quality standards and certification similar to that of the AOO model of France. The MOA measure covers only a narrow area and is limited only

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<sup>68</sup> Wang Xiaobing & Irina Kireeva, *Protection of Geographical Indications in China: Conflicts, Causes and Solutions*, 10(2) J. WORLD INTELL. PROP. 79, 79-80 (2007).

<sup>69</sup> Bradley M Bashaw, *Geographical Indications in China: Why Protect GIs with both Trademark Law and AOC-type Legislation*, 17 PAC. RIM L. & POL'Y J. 73, 74-75 (2008).

<sup>70</sup> Mark J Calaguas, *A Rosé by any other Name: Protecting Geographical Indications for Wines and Spirits in China*, 3 LOY. U. CHI. INT'L. L. REV. 257, 268-271 (2005).

<sup>71</sup> WANG, *supra* note 68, at 79-80.

<sup>72</sup> (中华人民共和国商标法) [Trademark Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 23, 1982, effective Mar. 1, 1983), art. 16 (China).

to agricultural products. In addition to the existing systems, China is about to bring specific GI legislation. On September 24, 2020, the *China National Intellectual Property Administration* (CNIPA) released a Draft Law on GI for further comments.<sup>73</sup> The proposed legislation is seen as a response to the recent bilateral agreement on GIs which was signed with the EU. The first phase of the bilateral agreement is expected to protect a hundred Chinese GIs in the EU market, with a prospect of further 175 GIs to be protected after four years in the second phase.

Like China, India also has abundant reserves of GIs that will provide enormous economic and cultural benefits if exploited wisely. The negotiation between India and the EU on the “*Broad-based Trade and Investment Agreement*” (BTIA) began in 2007 and is not yet completed because of conflicting interests.<sup>74</sup> In such a scenario, the successful conclusion of a separate agreement dealing exclusively with GIs as entered into by China and the EU is opening a new path for countries like India.

## CONCLUSION

The GIGA 1999 is relatively a new piece of IP legislation in India, which came into force only by late 2003. Therefore, there are still areas of concern and confusion as to the implementation of the legislation for attaining the primary purposes intended while drafting the law. The GIGA 1999 is progressive legislation and offers much more than a mere fulfilment of the TRIPS obligations. However, even after two decades of GIGA’s enactment, there is a considerable lack of awareness about the law. As of December 2020, only 370 goods are registered as GIs before the GI Registry. The fewer number of applications received for registration show the public's lack of awareness about GI registration's economic possibilities. Presently, the GI Registry performs additional responsibility for conducting awareness programs in rural areas with GI potential. However, the Registry's functioning is hindered to a considerable extent due to the inadequacy of manpower.

Therefore, creating awareness about the law and marketing of the products is to be concertedly pursued. For that purpose, India's GI logo needs to be marketed as a viable brand like the PDO and PGI of the EU. The unscientific nature of pre-registration scrutiny taking place at the

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<sup>73</sup> Aaron Wininger, *China Issues Draft Provisions on the Protection of Geographical Indications*, NATIONAL LAW REVIEW (Dec. 24, 2020, 6:00 PM), <https://www.natlawreview.com/article/china-issues-draft-provisions-protection-geographical-indications>.

<sup>74</sup> Amiti Sen, *EU Wants A Separate Investment Protection Pact with India*, THE HINDU BUSINESS LINE (Dec. 24, 2020, 1:30 PM), <https://www.thehindubusinessline.com/economy/eu-wants-a-separate-investment-protection-pact-with-india/article30390422.ece>.



Registry level is also an issue as there are many examples of products with very little economic utility also getting GI tags. In addition to that, at present, there is no structured mechanism for mapping potential GIs. The Act is also silent about having an institutional mechanism for post-registration monitoring of registered GIs. Post-registration quality monitoring is necessary for better marketing of domestic products in the international market. Mapping potential products, speedy registration, post-registration monitoring, and brand building are all equally vital and need a strong policy outlook for effective implementation. A strong policy framework at the national level may further strengthen the strategic marketing of GI products.

The nature of GI protection in India is different from that of the EU and other developed countries. In the EU, the protection of wines and spirits is seen as more critical, whereas agricultural products and handicrafts are given prominence in India. Therefore, the efforts for GI protection need to address these issues separately. It is very important to have regional arrangements among developing countries to protect agricultural and handicraft products effectively. A similar arrangement in the likes of the EU Regulation on GIs among Asian countries is a possible alternative. Such cooperation may further strengthen the efforts for the extension of protection to products other than wines and spirits

In a developing country like India, where the farmers and artisans are not individually capable of protecting their GI tagged products to a larger extent, the State has a significant role to play regarding the exporting, marketing as well as in the prevention of infringement. As GI is considered to be “a poor man’s IPR,” it is appropriate to have governmental intervention for protecting the collective rights and interests of the GI holders. The establishment of a producer’s collective like the INAO of France under Governmental supervision may benefit the producers. In addition to the challenges of preventing infringement at the domestic level, the Government also has the extra responsibility of registering and marketing Indian products in foreign jurisdictions. Due to the stringent procedures and expenses associated with GI registration, only three Indian products have applied for it in Europe thus far (These products are *Darjeeling Tea*, *Kangra Tea*, and *Basmati Rice*). Out of the three applications made, only one product got registered by the EU Commission (*Darjeeling Tea* was registered in 2011). In this context, the possibility of signing a bilateral agreement that ensures the registration of multiple GIs at one go can be looked into. The successful example of the EU-China exclusive trade deal on GIs is a positive model in this regard.

Therefore, enactment of a comprehensive GI policy, establishing a strong producer collective, and active involvement in regional arrangements with GI protection measures are some of the positive measures that India may pursue for better GI protection. Besides these measures, signing a bilateral trade deal with the EU dealing exclusively on GIs may also be beneficial for Indian GIs.

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