

Operationalisation of GI Protection in India: A Preliminary Exploration

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1. The Backdrop

The term ‘Geographical Indications’ (GIs) entered the terminology of international intellectual property law by way of its inclusion in the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO). While GI, with its very specific legal meaning *a la* the TRIPS Agreement, is a relatively new category of intellectual property right (IPR), the practice of using place names or other symbols as ‘indications of the geographical origin’ of a product is an age-old practice. As far as the scope of protection of GIs under TRIPS is concerned, there is a problem of a hierarchy in the levels of protection based on an arbitrary categorisation of goods. This is because, though TRIPS contains a single, identical definition for all GIs, irrespective of product categories, it mandates a two level system of protection - (i) the basic protection applicable to all GIs in general (under Article 22); and (ii) an additional protection applicable only for the GIs denominating wines and spirits (under Article 23).¹ Since 2000, India, along with a host of other like-minded countries has been pressing for an ‘extension’ of Article 23 protection to cover all categories of GIs. However, due to wide-ranging divergences of views among various WTO-Members the issue of ‘extension’ has reached a situation of virtual stalemate for quite some time now.²

Meanwhile, India has put in place a *sui generis* system of GI protection with enactment of a law exclusively dealing with protection of GIs, e.g. ‘The Geographical Indications of Goods (Registration & Protection) Act, 1999’ (GI Act), followed by the ‘Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). This legislation was formulated as part of the exercise in the country to put in place national intellectual property laws in compliance with India’s obligations under TRIPS. Under the purview of the GI Act, which came into force, along with the GI Rules, with effect from 15 September 2003, the Central Government has established the Geographical Indications Registry with all India jurisdiction in Chennai (a state³ situated in the southern part of India), where the right holders can register their GIs. The GI Act is

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¹ For further details, see Das, 2007, pp. 19-28.

² *Op.cit.*, pp. 32-42.

³ The federal structure of India comprises the ‘centre’ and the ‘states’. In other words, a ‘state’ in India is the second tier in the system of governance and administration. India at present consists of 28 states.

being administered by the Controller General of Patents, Designs and Trade Marks - who is the Registrar of Geographical Indications. Around 40 GIs of Indian origin have already been registered under the GI Act. This include GIs like Darjeeling (tea), 'Pochampally' Ikat (textiles), 'Chanderi' (saree), 'Kancheepuram silk' (textiles), 'Kondapalli' (toy), etc.

This paper focuses on the implementation of the GI Act in India. At the outset, the paper highlights certain salient features of the Indian GI Act (Section 2) and the GI registration process in India (Section 3). The status of the GI registration in India is provided in Section 4. Sections 5 and 6 contain detailed case studies of a few products that have either already been registered as GIs (Darjeeling tea) or are in the process of being registered (Kashmir Handicrafts). These case-studies explore the process through which the GI legislation is getting operationalised in various parts of India. Section 7 deals with certain key issues and concerns in the context of the operationalisation of the GI system in India and its possible implications. In the light of the case studies, Section 8 concludes by identifying the key areas in which the central and/or the state governments of India may play a significant role in the context of operationalisation of the GI Act in the country.

2. The Indian GI Act: Certain Interesting Features

Definition of the Subject Matter

The definition of GI included in Section 1(3)(e) of the Indian GI Act is as follows:

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

The explanation added to this definition clarifies that for the purposes of this clause, any name which is not the name of a country, region or locality of that country “shall” also be considered as a GI if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be. This clearly creates room for providing protection to symbols other than geographical names, such as ‘Basmati’.

Notably, while the TRIPS definition (as per Article 22.1⁴) refers to “goods” as a whole, Section 1(3)(f) of the Indian Act specifies that:

⁴ Article 22.1 of TRIPS defines GIs as under:

Geographical indications are, for the purposes of this Agreement, 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.

“goods” means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

However, it may be noted that the aforesaid categories of goods basically cover the entire gamut of ‘goods’. Hence, the Indian definition does not really deviate from the scope of coverage of ‘goods’ under Article 22.1 of TRIPS.

While TRIPS (Article 22.1) requires “a given quality, reputation or other characteristic” of the good to be essentially attributable to its geographical origin, the GI Act, in case of manufactured goods, includes the additional requirement that, one of the activities of either the production, or processing, or preparation of the good concerned must also take place in the place of its geographical origin. This requirement is more stringent than that under Article 22.1 of TRIPS. This can be explained by taking ‘Darjeeling’ tea as an example. ‘Darjeeling’ tea involves manufacture. Because, the green tea leaves plucked from the tea bushes go through a range of rigorous processing stages before turning into the final product (called ‘made-tea’), which is ultimately sold in the market. Now, even if the tealeaves are plucked from Darjeeling, the GI Act will not allow the final product to be designated as ‘Darjeeling tea’, unless the processing also takes place within the Darjeeling region, as demarcated for the purpose of this GI.⁵ The TRIPS definition will, however, allow the final product to be designated as ‘Darjeeling tea’, even if the processing takes place outside the demarcated region of Darjeeling, if it can be established that “a given quality” (e.g. flavour, etc.), “reputation”, or “other characteristic” of the tea is essentially attributable to the demarcated region associated with the GI ‘Darjeeling’.

Regarding the reference to “a given quality, reputation and other characteristic” in the TRIPS definition (Article 22.1), TRIPS does not clarify any of these requirements further. Thus TRIPS is silent on whether these requirements imply only such qualities and characteristics, which may be attributed to ‘natural factors’ (e.g. climate etc.), or whether those characteristics that result from ‘human factors’ (such as artisans residing in a particular region) may also be covered under the definition contained in Article 22.1. Notably, the inclusion of ‘human factors’ becomes vital for India to ensure that the potential GIs associated with various handicraft products of Indian origin also get protected. For instance, ‘Kancheepuram silk’ is product of skilled labour from Tamil Nadu; ‘Kolhapuri’ chappals are products of skilled labour from Maharashtra; etc. In this context, it may be noted that Section 11(2)(a) of the GI Act, which stipulates what an application for registration should contain, refers to the “geographical environment, with its inherent natural and human factors”.⁶

⁵ It may be noted here that the region demarcated for the purpose of the GI ‘Darjeeling’ (tea) is not the same as the administrative district of Darjeeling; the former is only a subset of the latter. The administrative district of Darjeeling has been divided into two tea-growing regions: Terai, which constitutes the plains of Darjeeling district, and Darjeeling, comprising the hills of this district. Thus, tea grown in the Terai region does not belong to the category of ‘Darjeeling tea’. In fact, the precise geographical region associated with the term ‘Darjeeling tea’ has been clearly specified in the ‘definition’ of ‘Darjeeling tea’ as laid down by the Tea Board of India (For further details, see Das, 2006, pp. 478-79).

⁶ This clause requires that an application for registration should contain:
statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the

Registration Necessary for Protection

Registration is necessary for protection under the Indian GI Act. Section 20(1) of the GI Act states that no person “shall” be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an “unregistered” GI. The GI Registry with all India jurisdiction is located in Chennai. The Controller-General of Patents, Designs and Trade Marks is the Registrar of GIs, as per Section 3(1) of the GI Act. Section 6(1) further stipulates maintenance of a GI Register.⁷ The register is to be divided into two parts: Part A and Part B. The particulars relating to the registration of the GIs are incorporated in Part A, while the particulars relating to the registration of the authorised users are contained in Part B (Section 7 of the Act).

A GI may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar. The Registrar is required to classify the goods, as far as possible, in accordance with the International classification of goods for the purposes of registration of GI (Section 8 of the Act). A single application may be made for registration of a GI for different classes of goods and fee payable is to be in respect of each such class of goods (Section 11(3) of the Act).

Duration of Registration

As per Section 18(1) of the GI Act, a GI may initially be registered for a period of ten years, but may be renewed from time to time after that.

‘Registered Proprietor’ and ‘Authorised User’

The GI Act makes a distinction between ‘registered proprietor’ and ‘authorised user’. ‘Registered proprietor’ in relation to a GI means any association of persons or of producers or any organisation for the time being entered in the register as proprietor of the GI (Section 1(3)(n) of the Act). ‘Authorised user’ means the authorised user of a GI registered under the GI Act (Section 1(3)(b)). Section 17(1) further clarifies that any person claiming to be the producer of the goods in respect of which a GI has been registered may apply in writing to the Registrar for registering him as an authorised user of such GI.

On the registration of a GI, the GI Registrar is required to issue each to the applicant and the authorised users, if registered with the GI, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the GI Registry.

Importantly, it is the ‘authorised users’ and not the ‘registered proprietor’ who have the exclusive right to the use of the GI in relation to the goods in respect of which the GI is registered, subject to any condition and limitation to which the registration is subject (Section 21(1)(b) & 21(1)(c) of the

geographical, environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

⁷ Section 6(1) states that:

For the purposes of this Act, a record called the Register of geographical indications shall be kept at the Head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

GI Act). This concept goes well with collective right concept as those who enter the trade subsequent to the registration can also get registered as 'authorised users'. However, both the 'registered proprietor' and the 'authorised users' have the right to obtain relief in respect of infringement of the GI in the manner provided by this Act (Section 21(1)(a)).

Non-assignable

As per Section 24 of the GI Act, any right to a registered GI is not a subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement.

Rights of Action against Passing-off

Section 20(2) of the GI Act specifies that nothing in this Act "shall" be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

In its simplest form, the principle of passing-off states that no one is entitled to pass-off his/her goods as those of another. The principal purpose of an action against passing off is therefore, to protect the name, reputation and goodwill of traders or producers against any unfair attempt to free ride on them. Though, India, like many other common law countries, does not have a statute specifically dealing with unfair competition, most of such acts of unfair competition can be prevented by way of action against passing-off.

Notably, Article 24.3 of TRIPS clearly states that in implementing the TRIPS provisions on GIs, a Member is not required to diminish the protection of GIs that existed in that Member immediately prior to the date of entry. This flexibility has been utilised by India in Section 20(2) of the GI Act in maintaining the right of action against passing-off, which has been a part of the common law tradition of India, even prior to the advent of the TRIPS Agreement.

Court for Instituting Law Suits

Any lawsuit relating to infringement of a registered GI, etc. is to be instituted in a district⁸ court (Section 66 of the Act).

Relief

Section 67 of the Act creates ground for obtaining relief. The relief, which a court may grant in any suit for infringement or for passing off includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery- up of the infringing labels and indications for destruction or erasure.

Penalty for Misuse of GIs

Any person found to be guilty of being involved in falsification or false application of a GI or sales of a good to which a false GI is applied, would generally be punishable with imprisonment for a term of at least six months but which may extend to three years and with fine which "shall" not be less than fifty thousand rupees (US\$ 1220 approximately⁹) but which may extend to two lakhs rupees (US\$ 4878 approximately) (Sections 39 and 40).

⁸ India is divided into various 'states' and each state is divided into a number of 'districts', which constitute the next unit of governance and administration.

⁹ Here 1 US\$= 41 Rupees.

If a person, having already been convicted of an offence under Sections 39 or 40, is again convicted of any such offence, s/he will generally be punishable for the second and for every subsequent offence, with imprisonment for a term of at least one year but which may extend to three years and with fine of at least one lakh rupees (US\$ 2439 approximately) but which may extend to two lakhs rupees (US\$ 4878 approximately). There are certain other penalty provisions for say, falsely representing an unregistered GI as registered (Section 42), falsification of entries in the GI Register (Section 44), etc.

Appeal

As per Section 31 of the GI Act, any person aggrieved by an order or decision of the Registrar under this Act, or the Rules made thereunder, may put forward an appeal to the Appellate Board within a specified time period. The Appellate Board, in this context, means the Appellate Board established under Section 83 of the Trade Marks Act, 1999 (Section 1(3)(a) of the GI Act).

Reciprocity

As per Section 85 of the GI Act, where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of GIs as it accords to its own nationals, no nationals of such a country is entitled to apply for the registration of, or be registered as the 'registered proprietor' or 'authorised user' of a GI.

Counterpart of Article 23 of TRIPS

The first provision under Article 23.1 of TRIPS,¹⁰ which sets the ground for additional protection for wines and spirits GIs, has its counterpart in the Indian GI Act under Sections 22(2) and 22(3). However, a significant divergence of the Indian Act from the TRIPS approach is worth highlighting here. While the TRIPS provision relates to wines and spirits alone, under the Indian Act, the Central Government has been given the discretion to accord similar protection to other categories of goods also, by notifying such goods in the Official Gazette.¹¹ Similar divergence

¹⁰ Article 23.1 of TRIPS states that:

Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

The footnote added at the end of this provision, which is Footnote no. 4 under TRIPS, reads as follows:

Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

¹¹Section 22 (2) of the GI Act:

The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

Section 22(3):

Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-section (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating true origin of such goods or uses such other geographical indication to such goods or

may be found in other provisions of the Indian Act (Sections 25¹² and 10,¹³ respectively) that correspond to Articles 23.2¹⁴ and 23.3¹⁵ of TRIPS.

3. Key Stages of the GI Registration Procedure in India

Fig.1 provides a flow-chart of the key stages of the GI registration procedure in India, as discussed below.

class or classes of goods in translation of the true place of origin or accompanied by expression such as “kind”, “style”, “imitation”, or the like expression, shall infringe such registered geographical indication.

¹² Section 25 of the GI Act:

Notwithstanding anything contained in the Trade Marks Act, 1999, the Registrar of Trade Marks referred to in Section 3 of that Act, shall, suo motu or at the request of an interested party, refuse or invalidate the registrations of a trade mark which-

(a) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(b) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (2) of Section 22.

Sub-section (2) of Section 22 states that:

The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

¹³ Section 10 of the GI Act:

Subject to the provisions of Section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

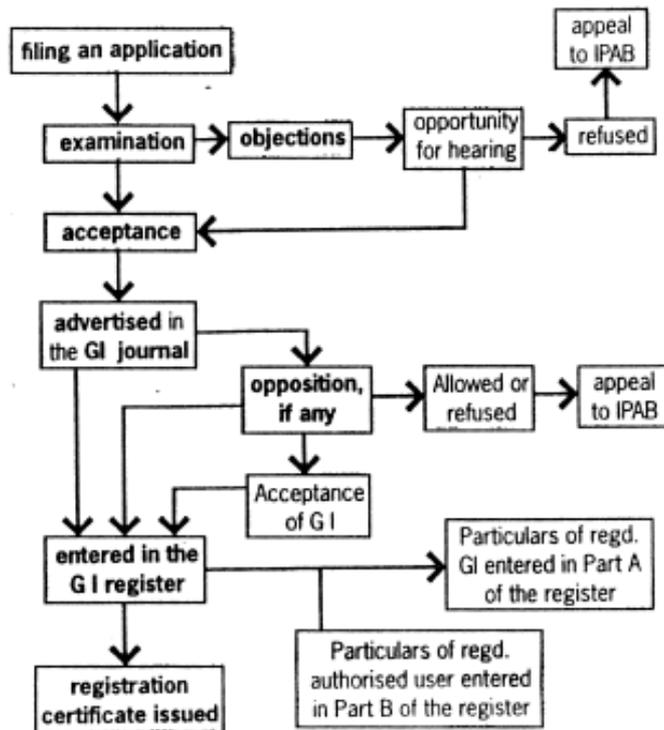
¹⁴ Article 23.2 of TRIPS:

The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

¹⁵ Article 23.3 of TRIPS:

In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

Figure 1



Filing of Application

Section 11(1) of the GI Act states that:

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, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical.

Section 11(2) of the GI Act stipulates the required documentation for applying for a GI. Section 32(1) of the GI Rules replicates these provisions and also adds certain other documentation requirements. Section 32(1) of the GI Rules, which is self-explanatory, is reproduced below (with emphasis added by the authors to highlight certain striking features):

Content of application: Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following:

- (1) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the*

production, processing or preparation of which takes place in such territory, region or locality as the case may be ;

*(2) **the class of goods to which the geographical indication relates shall apply;***

*(3) **the geographical map of the territory of the country or region or locality in the country in which the goods are produced of originate or are being manufactured;***

*(4) **the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;***

*(5) **A statement containing such particulars of the producers of the concerned goods proposed to be initially registered. The statement may contain such other particulars of the producers mentioned in Section 11(2)(f) including a collective reference to all the producers of the goods in respect of which the application is made.***

*(6) **the statement contained in the application shall also include the following:***

- a) **an affidavit as to how the applicant claim to represent the interest of the association of persons or producers or any organization or authority established by or under any law;***
- b) **the standards benchmark for the use of the geographical indication or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation, or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any or other characteristic from the definite territory of the country, region or locality in the country, as the case may be;***
- c) **the particulars of the mechanism to ensure that the standards, quality, integrity and consistency or other special characteristic in respect of the goods to which the geographical indication relates which are maintained by the producers, maker or manufacturers of the goods, as the case may be;***
- d) **three certified copies of the map of the territory, region or locality showing the title, name of publisher and date of issue along with the application;***
- e) **the particulars of special human skill involved or the uniqueness of the geographical environment or other inherent characteristics associated with the geographical indication to which the application relates;***

- f) *the full name and address of the association of persons or organisation or authority representing the interest of the producers of the concerned goods;*
- g) *particulars of the inspection structure, if any, to regulate the use of the geographical indication in respect of the goods for which application is made in the definite territory region or locality mentioned in the application;*
- h) *where the geographical indication is a homonymous indication to an already registered geographical indication, the material factors differentiating the application from the registered geographical indications and particulars of protective measures adopted by the applicant to ensure consumers of such goods are not confused or misled or confused in consequence of such registration;*

Examination of Application

As per Section 11(5) of the GI Act, every application is required to be examined by the Registrar. The Register is supposed to constitute a Consultative Group of not more than seven representatives chaired by him from organisations or authority or persons well versed in the varied intricacies of this law or field to ascertain the correctness of the particulars furnished in the application. This process is expected to be finalised within three months from the date of constitution of the Consultative Group, after which the Registrar is required to issue an 'Examination Report' on the application to the applicant.

Acceptance of Application or Objection to Acceptance

As per Section 11(6) of the GI Act, subsequent to examination, the Registrar may refuse the application or may accept it absolutely or subject to certain conditions, modifications, etc. However, the Registrar is required to communicate such objection or proposal for modification in writing to the applicant, as per Section 34(1) of the GI Rules. If within two months from the date of such communication, (i) the applicant does not amend his application according to the proposal of the Register, or (ii) fails to submit his observations to the Registrar, or (iii) does not apply for a hearing, or (iv) fails to attend the hearing, as the case may be, the application will stand dismissed (Section 34(2) of the GI Rules).

Whatever may be the case, the decision of the Registrar is required to be communicated to the applicant in writing.

Advertisement

As per Section 13(1) of the GI Act and Section 38(1) of the GI Rules, when an application for registration of a GI is accepted, it is to be advertised in the GI Journal within three months of the acceptance of the application.

Opposition to Registration

Any person may, within a specified time period (generally three months) from the date of advertisement of an application, give a written notice to the Registrar of opposition to the registration. In case such an opposition is submitted, the Registrar is required to serve a copy of

the notice on the applicant of the GI. Within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant is required to send to the Registrar a counter-statement of the grounds on which s/he relies for his/her application. If s/he fails to do so, s/he “shall” be deemed to have abandoned his/her application. If, however, the GI-applicant sends such counter-statement, the Registrar is required to serve a copy thereof on the person giving notice of opposition. After hearing the parties, if so required, and considering the evidence, the Registrar is supposed to decide whether and subject to what conditions or limitations, if any, the registration is to be permitted (Section 14 of the GI Act & Section 41 of the GI Rules).

Acceptance & Registration

As per Section 16(1) of the GI Act, when an application for registration of a GI has been accepted and (a) either the application has not been opposed and the time for notice of opposition has expired; or (b) the applicant has been opposed and the opposition has been decided in favour of the applicant, the Registrar is required to register the said GI and the authorised users and include the GI in Part A of the GI Register (as per Section 53(1) of the GI Rules). On the registration of a GI, the Registrar is required to issue each to the applicant and the authorised users a certificate sealed with the seal of the Geographical Indication Registry (Section 16(2) of the GI Act).

4. Status of GI Registration in India

As far as domestic protection of Indian GIs is concerned, the establishment of a national system of registration under the purview of the GI Act is a significant step forward in the right direction on part of India. Till 15 May 2007, the GI Registry in Chennai had received 94 applications, all from India (See Table 1 for further details of these applications). Out of them, 30 GIs had already been registered. These include GIs like Darjeeling (tea), ‘Pochampalli’ Ikat (textiles), ‘Chanderi’ (saree), ‘Kancheepuram silk’ (textiles), ‘Kashmir Pashmina’ (shawls), ‘Kondapalli’ (toy), Mysore (agarbathi), etc. (See Table 2 for further details).

Table 1
Applications Received by the GI Registry of India Till
15 May 2007

Application No.	Date of Filing	Geographical Indications Applied For
1	27.10.2003	Darjeeling Tea (word)
2	27.10.2003	Darjeeling Tea (Logo)
3	08.12.2003	Aranmula Kannadi
4	11.02.2004	Pochampalli Ikat
5	12.02.2004	Salem Fabric
6	23.02.2004	Payyannur Pavithra Ring
7	02.04.2004	Chanderi Saree
8	05.04.2004	Solapur Chaddar
9	20.05.2004	Solapur Terry Towel
10	10.06.2004	Kotpad Handloom fabric
11	22.07.2004	Mysore Silk
12	22.07.2004	Kota Doria
13	11.08.2004	Mysore Agarbathi

14	19.08.2004	Basmati Rice
15	07.10.2004	Kancheepuram Silk
16	25.10.2004	Bhavani Jamakkalam
17	25.11.2004	Navara Rice
18	25.11.2004	Mysore Agarbathi (Logo)
19	10.12.2004	Kullu Shawl
20	24.01.2005	Bidar
21	24.01.2005	Madurai Sungudi
22	01.02.2005	Orissa Ikat
23	07.02.2005	Channapatna Toys & Dolls
24	07.02.2005	Mysore Rosewood Inlay
25	11.02.2005	Kangra Tea
26	14.03.2005	Coimbatore Wet Grinder
27	14.03.2005	Phulkari
28	16.03.2005	Srikalahasthi Kalamkari
29	18.03.2005	Mysore Sandalwood Oil
30	18.03.2005	Mysore Sandal soap
31	31.03.2005	Kasuti Embroidery
32	31.03.2005	Mysore Traditional Paintings
33	31.03.2005	Kodagina Kittale(Coorg Orange)
34	31.03.2005	Mysore Betel vine
35	31.03.2005	Nanjanagud Banana
36	18.04.2005	Palakkadan Matta Rice
37	22.08.2005	Madhubani Paintings
38	15.09.2005	Jamnagar Petrol
39	15.09.2005	Jamnagar Fuel
40	15.09.2005	Krishna Godavari Gas
41	15.09.2005	Jamnagar LPG
42	15.09.2005	Jamnagar Diesel
43	29.09.2005	Pisco (Convention Application)
44	10.11.2005	Kondapalli Bommallu
45	28.11.2005	Poddar Diamond
46	09.12.2005	Kashmir Pashmina`
47	04.01.2006	Thanjavur Paintings
48	19.01.2006	Kashmir Sozani Craft
49	13.02.2006	Malabar pepper
50	13.02.2006	Allahabad Surkha
51	13.02.2006	Kani Shawl
52	07.04.2006	Nakshi Kantha
53	28.04.2006	Silver Filigree
54	03.07.2006	Alleppey Coir
55	20.07.2006	Muga Silk
56	20.07.2006	Tellechery Pepper

57	26.07.2006	Coconut shell crafts of Kerala
58	26.07.2006	Screw pine crafts of Kerala
59	26.07.2006	Maddalam of Palakkad (Kerala)
60	26.07.2006	Ganjifa cards of Mysore (Karnataka)
61	26.07.2006	Navalgund durries
62	26.07.2006	Karnataka bronze ware
63	26.07.2006	Thanjavur Art Plate
64	26.07.2006	Swamimalai Bronze icons
65	26.07.2006	Temple jewellery of Nagercoil
66	14.08.2006	Blue Pottery of Jaipur
67	31.08.06	Molela Clay Idols
68	31.08.06	Kathputlis of Rajasthan
69	24.07.06	Mysore Jasmine
70	24.07.06	Udupi Jasmine
71	24.07.06	Hadagali Jasmine
72	14.09.06	Spices - Alleppey Green Cardamom
73	21.09.06	Applique - Khatwa Patch Work of Bihar
74	21.09.06	Sujini Embroidery Work of Bihar
75	21.09.06	Sikki Grass Work of Bihar
76	16.10.06	Ilkal Sarees
77	16.10.06	Molakalmuru Sarees
78	27.12.06	Coorg Green Cardamom
79	22.01.07	Chamba Rumal
80	24.01.07	Dharwad Pedha
81	29.01.07	Pokkali Rice
82	12.03.07	Bastar Iron Craft
83	12.03.07	Bastar Dhokra
84	12.03.07	Bastar Wooden Craft
85	05.04.07	Monsooned Malabar Logo
86	09.04.07	Pipli Applique Work
87	09.04.07	Konark Stone Carving
88	09.04.07	Puri Pattachitra
89	16.04.07	Budhiti bell & brass craft
90	16.04.07	Machilipatnam Kalamkari
91	16.04.07	Nirmal Toys and Crafts
92	25.04.07	Arni Silk
93	25.04.07	Covai Cora Cotton
94	15.05.07	Salem Silk

Source: GI Registry of India, Chennai.

Table 2
GIs Registered in India Till March 2007

Sl.No	Application No.	Class	Date of Filing	Geographical Indications	Date of Registration
1	1 & 2	30	27.10.2003	Darjeeling Tea (word & Logo)	29.10.2004
2	4	24, 25 & 27	11.02.2004	Pochampalli Ikat	31.12.2004
3	7	24	02.04.2004	Chanderi Fabric	28.01.2005
4	10	24	10.06.2004	Kotpad Handloom fabric	02.06.2005
5	13 & 18	3	11.08.2004 / 25.11.2004	Mysore Agarbathi	02.06.2005
6	15	24 & 25	07.10.2004	Kancheepuram Silk	02.06.2005
7	16	24	25.10.2004	Bhavani Jamakkalam	05.07.2005
8	12	24 & 25	22.07.2004	Kota Doria	05.07.2005
9	3	20	08.12.2003	Aranmula Kannadi	19.09.2005
10	5	24	12.02.2004	Salem Fabric	19.09.2005
11	8	24	05.04.2004	Solapur Chaddar	19.09.2005
12	9	24	20.05.2004	Solapur Terry Towel	19.09.2005
13	11	24, 25 & 26	22.07.2004	Mysore Silk	28.11.2005
14	19	24	10.12.2004	Kullu Shawl	12.12.2005
15	21	24 & 25	24.01.2005	Madurai Sungudi	12.12.2005
16	25	30	11.02.2005	Kangra Tea	12.12.2005
17	20	6	24.01.2005	Bidar	30.01.2006
18	23	28	07.02.2005	Channapatna Toys & Dolls	30.01.2006
19	24	19, 20, 27 & 28	07.02.2005	Mysore Rosewood Inlay	30.01.2006
20	26	7	14.03.2005	Coimbatore Wet Grinder	30.01.2006
21	29	3	18.03.2005	Mysore Sandalwood Oil	30.01.2006
22	30	3	18.03.2005	Mysore Sandal soap	30.01.2006
23	31	26	31.03.2005	Kasuti Embroidery	30.01.2006
24	32	16	31.03.2005	Mysore Traditional Paintings	30.01.2006
25	33	31	31.03.2005	Kodagina Kittale (Coorg Orange)	30.01.2006
26	34	31	31.03.2005	Mysore Betel vine	30.01.2006
27	35	31	31.03.2005	Nanjanagud Banana	30.01.2006
28	22	23, 24 & 25	01.02.2005	Orissa Ikat	07.06.2006
29	28	24, 25 & 27	16.03.2005	Srikalahasthi Kalamkari	05.02.2007
30	44	16 & 20	10.11.2005	Kondapalli Bommallu	05.02.2007

Source: GI Registry of India, Chennai.

As of 15 May 2007, another 7 GIs were on the verge of completing the registration process, as per information available from the GI Registry (See Table 3).

However, ‘Basmati’ (rice) - one of the most controversial and crucial GI-is yet to be registered under the GI Act. One of the main reasons for the delay in getting ‘Basmati’ registered under the GI Act is the selection of the right varieties. Over the years, scientists have developed several varieties of aromatic rice naming them as ‘Basmati’, although many of these aromatic rice varieties do not contain any parental line of the traditional ‘Basmati’. This has generated enormous confusion regarding the authenticity of different varieties of ‘Basmati’.¹⁶ The demarcation of the geographical area relevant for this GI is also a debatable issue - not only because it is grown in both India and Pakistan, but also because of the differences of opinion within India over this matter. According to news reports, at a meeting of the commerce secretaries, the two countries have agreed to jointly file application for the Basmati GI to end the dispute over sale of the rice variety in international markets. The two countries have now decided to set up a technical committee for this purpose, according to a joint statement by the two countries.¹⁷

Table 3
GIs on the Verge of Registration in India

S.No	Application No.	Class	Date of Filing	Geographical Indications
1	37	16	22.08.2005	Madhubani Paintings
2	47	16	04.01.2006	Thanjavur Paintings
3	53	6, 8, 14, 18, 20, 26 & 28	28.04.2006	Silver Filigree of Karimnagar
4	54	27	03.07.2006	Alleppey Coir
5	69	31	24.07.2006	Mysore Jasmine
6	70	31	24.07.2006	Udupi Jasmine
7	71	31	24.07.2006	Hadagali Jasmine

Note: As per the information received from the GI Registry till 15 May 2007, the GIs included in this table were already matured for issuance of certificate and the activity of Hindi translation was in progress.

Source: GI Registry of India, Chennai.

There are many more Indian GIs in the pipeline for registration under the GI Act. The GOI is reportedly planning to ensure GI-status for a number of agro and textile products shortly.¹⁸

5. Case Study: Darjeeling Tea

Tea is India’s oldest industry in the organised manufacturing sector and has retained its position as the single largest employer in this sector. India produces approximately 750 million kg. of tea annually making it the largest tea producer in the world. Around 30 per cent of the world’s tea is

¹⁶ Sharma (2005).

¹⁷ <<http://www.hindu.com/thehindu/holnus/015200708020338.htm>>

¹⁸ *The Economic Times* (2007).

produced in the country. India is also the world's largest consumer of tea. However, on the export front India is facing huge competition from other key tea producing countries, such as Kenya, Sri Lanka and China.

'Darjeeling' tea is a premium quality tea produced in the hilly regions of the Darjeeling district West Bengal—a state in the eastern province of India. Although Darjeeling tea is undoubtedly the best among all categories of tea produced in India, its share in total tea production of India is a miniscule 1–1.5%.

5.1 History

The name 'Darjeeling' is of Tibetan origin and has a legend associated with it. The original name was 'Dorje-ling'. In Tibetan language, the word 'Dorje' means the thunderbolt of Lord Indra (the king of heaven as per the Hindu mythology) and 'ling' means a place. Thus 'Dorje-ling' connotes 'Land of the Thunderbolt'. The name has its origin in the legend that the thunderbolt of Lord Indra fell here.

The history of Darjeeling tea dates back to the 1840s, when India was a British colony. Before the arrival of the British, the forests of the region, known as Darjeeling today, were inhabited by a handful of Lepcha tribes. In 1828, while visiting this region located in the backdrop of the snow-clad Himalayan range, a young British called Captain Lloyd discovered the possibility of converting the region into a hill station or a sanitarium. That was the beginning of the establishment of Darjeeling, which over time has turned out to be a major tourist attraction of the world. In 1839, Darjeeling was handed over to Dr. A. Campbell, a civil surgeon, who got transferred from Kathmandu to Darjeeling to become the first Superintendent of the Darjeeling district, a position which he held for the next twenty two years.¹⁹ During that time the region was a sparsely populated hamlet, which was being used as a hill resort by the army and some affluent people. In 1841, Dr. Campbell brought the seeds of China variety of tea from Kumaon hills of North India and planted them near his residence in his Beechwood garden in Darjeeling, 2134 meters above the mean sea level. Seeing the success of Dr. Campbell's experimental tea nursery, the British Government decided to put out tea nurseries in the region in the year 1847. Land was offered by the government on very favourable terms, which attracted private entrepreneurs into tea plantation as an industrial enterprise. The first commercial tea gardens of Darjeeling, viz., Tukvar, Steinthal and Aloorbari, planted out by the British commercial interests, came into being in 1852. Tea seeds being used in all these plantations came from the Government nurseries. The growth of new tea plantations was fairly rapid as the experimental stage got over successfully. By 1874, tea in Darjeeling had turned out to be a profitable venture and there were 113 gardens spread over an area of approximately 6,000 hectares. Thus, commercial cultivation of tea kept going in Darjeeling. British ownership continued in many tea gardens of Darjeeling even after India's independence from British rule in 1947. However, by the end of the 1970s, most of the tea gardens of Darjeeling were in the hands of Indian owners, who had purchased them from the erstwhile British owners.²⁰ Today, 87 tea gardens spread over an area of around 17,800 hectares are producing approximately 9 million kgs of Darjeeling tea every year. Around 80% of Darjeeling tea is exported at a premium price every year. Some of the major export destinations of Darjeeling

¹⁹ Darjeeling Planters Association (1999), p.7.

²⁰ Levy (2004).

tea are Germany, Japan, the United States (USA), the United Kingdom (UK) and other European countries, such as the Netherlands, France, etc.

5.2 Geographical Origin

Situated in the northern part of the Indian state of West Bengal with an area of 1,200 square miles, the administrative district of Darjeeling comprises Darjeeling Sadar and three subdivisions: Siliguri, Kurseong, and Kalimpong. While Darjeeling Sadar, Kurseong and Kalimpong are located in the hilly terrain, Siliguri is situated in the plains. It is worth mentioning here that the geographical territory relevant for the GI 'Darjeeling' (tea) is only a fraction of the administrative district of Darjeeling. The administrative district of Darjeeling has been divided into two tea-growing regions: (i) 'Terai', which is located in the plains of the Darjeeling district, and (ii) 'Darjeeling', located in the hilly region of this district. Thus, tea grown in the Terai region does not belong to the category of 'Darjeeling tea'. Darjeeling tea is grown only in the hilly region of Darjeeling district at altitudes ranging from 600 to 2000 metres above the mean sea level.

The precise geographical region associated with the term 'Darjeeling tea' has been clearly specified in the definition of 'Darjeeling tea' laid out by the Tea Board of India. According to this definition, 'Darjeeling tea' refers to:

- tea that has been cultivated, grown, produced, manufactured and processed in tea gardens in the hilly areas of Sadar Sub-Division, only hilly areas of Kalimpong Sub-Division comprising of Samabeong Tea Estate, Ambikok Tea Estate, Mission Hill Tea Estate and Kumai Tea Estate and Kurseong Sub-Division excluding the areas in jurisdiction list 20, 21, 23, 24, 29, 31 and 33 comprising Subtiguri Sub-Division of New Chumta Tea Estate, Simulbari and Marionbari Tea Estate of Kurseong Police Station in Kurseong Sub-Division of the District of Darjeeling in the State of West Bengal, India;

- tea that has been processed and manufactured in a factory located in the aforesaid area which, when brewed, has a distinctive, naturally occurring aroma and taste with light tea liquor and the infused leaf of which has a distinctive fragrance.

The tea gardens producing Darjeeling tea are grouped into seven valleys of the Darjeeling hills. The valley groups, which were originally segregated on the basis of geographical proximity, when the tea gardens were accessible only on horseback, are as follows:

- ◆ Darjeeling (East),
- ◆ Darjeeling (West),
- ◆ Kurseong (North),
- ◆ Kurseong (South),
- ◆ Mirik,
- ◆ Rungbong,
- ◆ Teesta.

5.3 Uniqueness

Darjeeling tea has acquired worldwide reputation and patronage among the connoisseurs of tea drinking for its unique flavour. Darjeeling tea is graded as SFTGFOP, which means Supreme

Finest Tippy Golden Flowery Orange Pekoe.²¹ According to tea scientists, the rare flavour associated with Darjeeling tea is the outcome of a complex combination of a host of natural, agro climatic and other technical factors. These include factors, such as plant genes, temperatures, soil chemistry, elevations, precipitation, etc., which are unique to the hilly regions of Darjeeling. Scientific experiments have revealed that geraniol, linalool, terpenoids and some fatty acid degradation products add to the nature and the characteristic flavour of Darjeeling tea. Research carried out in the Tea Research Association, Tocklai, Assam (a state in the north-eastern province of India) has further revealed that in comparison to other teas, Darjeeling tea is much stronger and more volatile. The cold, dry windy nights, humid moisture-laden days with a relatively low temperature prevailing throughout the year in Darjeeling hills have been accredited for the formation of the unique flavour associated with this premium quality tea. Further, the genetic make up of the Chinari variety of tea bushes (predominantly cultivated in Darjeeling hills) is also found to have a significant impact on its flavour. Besides, the methods and stages of processing undertaken while converting the green tea leaves produced in Darjeeling hills into 'made-tea' (i.e. the final form in which tea comes to the market) are also said to have some influence on the uniqueness of Darjeeling tea. It is claimed by the experts on the science of Darjeeling tea that since the unique and complex combination of factors, which provides Darjeeling tea with its distinct flavour, is not found anywhere else in the world, hence the Darjeeling flavour cannot be replicated elsewhere. It is this geographical influence of Darjeeling hills on the flavour of Darjeeling tea that makes it qualify for getting protection as a GI.

5.4 Why does 'Darjeeling' Tea Need GI Protection?

For want of adequate legal protection, the legitimate right holders of Darjeeling tea have long since been adversely affected by the unscrupulous business practices of various commercial entities, who have been found to be free-riding on the goodwill and reputation associated with this premium quality Indian tea. For instance, tea produced in countries like Kenya, Sri Lanka or even Nepal has often been passed off around the world as 'Darjeeling tea'. According to a rough estimation, around 40 million kgs of tea is being sold worldwide as 'Darjeeling tea' every year, whereas the actual production of authentic Darjeeling tea hovers around 9 million kgs only. The reputation of 'Darjeeling' has also been misused on various other categories of products, as will be discussed at a later stage in this paper. While appropriate legal protection of this GI can go a long way in preventing such misuse, there is a stronger case for GI protection for Darjeeling tea, emanating from the crisis facing the industry during the recent years, which has raised serious concerns regarding its survival. The problems confronting the Darjeeling tea industry mainly revolve around two aspects: low and declining yield, and lack of adequate brand building. The low and declining yield is attributable to a combination of factors. More than 50% of the tea bushes in Darjeeling is China and China hybrid type whose shoots are very small and light in weight. About 12,500 shoots of two leaves and a bud from these bushes make one kg of tea, whereas a broad leaf Assam jat can produce the equivalent quantities of tea with less than half the shoots. Another major factor behind low and declining productivity of Darjeeling tea is the old age of tea bushes. Many tea bushes of Darjeeling are more than 100 years old because they have not been replaced at the required rate. Notably, the best yield of tea bushes comes between 30 and 50 years, whereas, in Darjeeling, more than 80 percent land area under tea nurtures bushes, which are over 50 years old.

²¹WIPO, 2003, p. 4.

A substantial proportion of tea bushes are even more than hundred years old. The rule of thumb is that 3% of tea bushes should be replaced every year, while the current rate is only 0.5% per year. The old age affects both yield and taste and with every postponed year, the cost increases. A major reason behind the slow rate of replacement of old bushes is the financial constraint facing the industry. The entire process of uprooting and replanting of tea bushes is time consuming process and has significant financial implications, due to the gestation lag involved between the time of replanting and the time when the tea bush becomes mature enough for plucking. Apart from the old age of the plants and the high rate of vacancy, elevation, the hills offer various types of stress conditions, such as low temperature, low soil moisture in winter, most of the areas remaining foggy during major part of the year; high humidity; low levels of solar radiation; the sloping terrain, which are likely to affect growth and yield of tea significantly.

Given such constraints in increasing the yield of Darjeeling tea in short and medium run, the financial condition is largely dependent on what price Darjeeling tea is able to fetch. Here, adequate GI protection, by way of preventing misuse of its reputation by tea produced elsewhere, can go a long way in improving the financial situation of the Darjeeling tea industry. Here comes the need for brand building, without which premium price cannot be guaranteed. The industry is now waking up to the fact that unless Darjeeling Tea is properly marketed and branded, the survival of the industry may be at stake. In this respect also, GI protection can go a long way in helping the industry to improve its brand image around the world. However, while the legal protection of GI is the necessary prerequisite for building the brand image of Darjeeling GI, marketing and promotional efforts are a must for the enforcement of this GI status. This is because, in settling a GI protection/ infringement case, enforcement authorities in different countries base their judgment on consumer perception about that particular GI in that country. Hence, there is a strong case for generating awareness among overseas consumers through marketing and promotional efforts, especially in view of the wide spread misuse of 'Darjeeling' in various countries. The Tea Board of India has already started some initiatives in that direction. International promotion for Origin teas is supposed to start during the current year. Initial phase of promotion is targeted to cover important markets, such as the UK, Germany, France, and the USA.

5.5 Evolution of the Legal Protection

The first attempt on the part of the Tea Board of India towards protection of the 'Darjeeling' brand was undertaken way back in 1983, when the 'Darjeeling' logo was created. The Tea Board obtained 'home protection' for the Darjeeling logo as a certification trade mark (CTM) under the Indian Trade and Merchandise Marks Act 1958 (now the Trade Marks Act, 1999). The registration was granted in class 30 in the name of the Tea Board (under No. 532240 filed on 9 October 1986). In the same year, the logo was registered as a trademark/CTM in several other countries like the UK, the USA, Canada, Japan, Egypt, and under the Madrid Agreement covering Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia. However, the attempt on the part of the Tea Board to ensure protection for the 'word' (as distinct from the 'logo') Darjeeling came much later. In the absence of a separate law dedicated exclusively to GIs in India during that time, the word 'Darjeeling' was also registered under the Trade and Merchandise Marks Act 1958 in class 30 in the name of Tea Board (under No. 831599 filed on 10 December 1998). Initiatives were also taken on the part of the Tea Board to register the 'word' Darjeeling in several foreign jurisdictions. In 1998, for instance, CTM protection for the 'word' Darjeeling was obtained in the UK. Certification mark protection for the 'word' Darjeeling was also secured in the

USA in 2002. In 2003, trade mark registration for Darjeeling ‘word’ was obtained in Russia, and so on (see Table 4 for further details). When the Geographical Indication Act in India was operationalised in September 2003, the Tea Board applied for GI protection of ‘Darjeeling’ in October 2003. In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a GI.

List of Registrations for Darjeeling word and logo marks as on 3 February 2007

Box 1

Tea Board of India

The genesis of the Tea Board dates back to 1903 when the India Tea Cess Bill was passed. While the tea industry in India is almost completely in the private sector, it is statutorily controlled by the Government right from 1933 under various enactments culminating in the Tea Act, 1953. The present Tea Board was set up on 1 April 1954 and functions as a statutory body, created by the Tea Act, 1953, under the Ministry of Commerce and Industry. The Board is administratively under the control of the Ministry of Commerce & Industry of the Government of India. The Tea Board is vested with the authority to administer all stages of tea cultivation, processing and sale of the tea industry, including the Darjeeling segment through various orders. The Tea Board, however, has been working in close cooperation and help of the Darjeeling Tea Association, which is the sole producers’ forum for the Darjeeling region.

The Board, which is headed by a Chairperson, comprises members nominated by the Government. In accordance with the provisions of the Tea Act, 1953, the constitution of the Board is diverse. The Board consists of 31 members as enumerated below:

- ◆ Three persons representing Parliament,
- ◆ Eight persons representing owners of tea estates,
- ◆ Six persons representing the Government of the Principal tea growing states namely, Assam, West Bengal, Tripura, Tamil Nadu, Kerala and Himachal Pradesh,
- ◆ Five persons representing persons employed in tea gardens and tea estates.
- ◆ Two persons representing dealers including both exporters and internal traders of tea.
- ◆ Two persons representing manufacturers of tea
- ◆ Two persons representing consumers
- ◆ Two persons representing other interests.

The Board is constituted on a financial year basis every three years. Among the various functions of the Board are:

- Development
- Finance
- Research
- Regulation of production, expert licence etc.
- Marketing and Promotion
- Labour Welfare
- Collection of Statistics
- Legal Matters
- Implementation of Official Languages Act.

Country	Nature and subject matter of registration	Date of Registration	Validity
Australia	Certification Mark for DARJEELING logo	17.11.2005	20.04.2014
Benelux Registration – Belgium, Netherlands, Luxembourg	Collective Mark for DARJEELING Logo	11.03.1988	11.03.2008

Canada	Official Mark for DARJEELING logo	15.03.1989	Valid until voluntarily abandoned or expunged pursuant to a court order.
EU member countries	Community Collective Mark for DARJEELING word	31.03.2006	07.03.2015
Egypt	Trademark for DARJEELING Logo	08.04.1999	28.09.2016
International Registration –Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia.	Collective Mark for DARJEELING logo	-	09.09.2008
India	Copyright registration for DARJEELING logo	11.05.2004	Valid Registration
India	Certification Mark for DARJEELING logo	09.10.1986	09.10.2007
India	Certification Mark for DARJEELING word.	10.12.1998	10.12.2015
India	DARJEELING word as a geographical indication	27.10.2003	27.10.2013
India	DARJEELING logo as a geographical indication	27.10.2003	27.10.2013
Japan	Trade Mark for DARJEELING logo	31.07.1989	31.07.2009
Lebanon	Collective mark for DARJEELING word	13.06.2005	13.06.2020
Lebanon	Collective mark for DARJEELING Logo	13.06.2005	13.06.2020
Russia	Trademark for DARJEELING	27.06.2003	20.04.2009
Russia	Word	16.01.2006	02.11.2009
Russia	Trademark for DARJEELING Logo	25.05.2005	15.07.2017
U.S.A.	Trademark for Darjeeling Logo	22.01.1991	22.01.2011
U.S.A.	Certification Mark for DARJEELING logo	11.02.2003	01.10.2012
U.K.	Certification Trade Mark for DARJEELING word.	11.10.1996	16.04.2008
U.K.	Certification Mark for the DARJEELING logo	03.08.2001	30.03.2008

The objectives behind the entire exercise towards ensuring an effective protection of ‘Darjeeling’ as a GI include the following:

- ◆ to prevent misuse of the word ‘Darjeeling’ for tea sold worldwide;
- ◆ to deliver the authentic Darjeeling tea to the consumers the world over;
- ◆ to enable the commercial benefits of the equity of the brand ‘Darjeeling’ to reach the legitimate producers of Darjeeling tea;
- ◆ to preserve the intrinsic flavour of Darjeeling tea and to uphold its reputation worldwide.

5.6 Certification Mechanism

As mentioned earlier, the GI Rules ‘(Section 32(1)) calls for establishment of a system of quality control and origin certification. As for Darjeeling tea, such a system was put in place long before it obtained its GI status in India in October 2004. In order to ensure the supply of genuine Darjeeling tea, in February 2000, the Tea Board established a statutorily compulsory system of certifying the authenticity of the Darjeeling tea being exported, under the purview of the Tea Act 1953. The system makes it compulsory for all the dealers in Darjeeling tea to enter into a licence agreement with the Tea Board on payment of an annual licence fee. Under this system, 300 entities dealing with Darjeeling tea have registered with the Tea Board. The terms and conditions of the agreement require, *inter alia*, that the licensees must furnish information relating to the production and manufacture of Darjeeling tea and its sale, through auction or otherwise. The Tea Board is thus

able to compute and compile the total volume of Darjeeling tea produced and sold in a given period. No blending with teas of other origin is permitted. Certificates of origin are then issued for export consignments under the Tea (Marketing and Distribution Control) Order, 2000, read with the Tea Act, 1953. Data is entered from the garden invoices (the first point of movement outside the factory) into a database, and the issue of the certificate of origin authenticates the export of each consignment of Darjeeling tea by cross-checking the database and garden invoice number. The customs authorities in India have, vide Customs notification dated 25 June 2001 (making all exports of Darjeeling Tea subject to mandatory proof of such certificate of origin), instructed all customs checkpoints to check for the certificates of origin accompanying the Darjeeling tea consignments and not to allow the export of any tea as 'Darjeeling' without this certificate. This ensures the supply-chain integrity of Darjeeling tea until consignments leave the country. Hence, all Darjeeling tea leaving the shores of India today is guaranteed 100% Darjeeling Tea.

The Tea Board has also sought the support of all overseas buyers, sellers, tea councils and associations so that they insist on certificates of origin to accompany all export consignments of Darjeeling tea. The purpose of all these initiatives is to ensure that the overseas importers are supplied with 100% Darjeeling tea in their consignments.

5.7 Enforcement & Challenges Involved therein

In order to prevent the misuse of the 'Darjeeling' word and the logo, the Tea Board has since 1998 hired the services of Compumark, a reputed watch dog agency. Compumark is required to monitor and report to the Tea Board all cases of unauthorised use and attempted registration. Pursuant to Compumark's appointment, several cases of attempted registrations and unauthorised use of the 'Darjeeling' word and logo have been reported. Some of these have been challenged through oppositions and cancellations and some through negotiations. Notably, marks thus opposed not only pertain to tea but also to other categories of goods and services, such as clothing, lingerie, telecommunication and Internet services, coffee, cocoa, etc.

The Tea Board has assumed the role of complainant in making and filing opposition or other legal measures whenever cases of unauthorised use or attempted or actual registration of the Darjeeling word and/or logo were brought to its notice. Such legal measures are generally taken where negotiation failed. Some disputes relating to Darjeeling tea have been settled through negotiation undertaken by the Tea Board of India with the foreign companies concerned with the help of their respective governments. For instance, Bulgari, Switzerland agreed to withdraw the legend 'Darjeeling Tea fragrance for men' pursuant to legal notice and negotiations by the Tea Board. The Tea Board has fought 15 cases against infringement and misuse of Darjeeling in the last four years. Marks opposed include 'Divine Darjeeling', 'Darjeeling', 'Darjeeling Nouveau', etc., relating to diverse goods and services, such as clothing, lingerie, telecommunication and internet services, coffee, cocoa, etc. (Table 5).

Table 5

Misuse of 'Darjeeling' Opposed by the Tea Board of India	
Country	Nature of misuse and product category
France	DARJEELING - perfumes, articles of clothing and telecommunication
Germany	Device applications with Darjeeling logo
Israel	DARJEELING - agricultural & horticultural products
Japan	DIVINE DARJEELING- coffee, cocoa, tea
	DARJEELING with India map
	DARJEELING Logo - serving tea, coffee, soft drinks
Norway	DARJEELING - telecommunication
Russia	DARJEELING - Tea
	DARJEELING Logo - Tea
Sri Lanka	SAKIR DARJEELING TEA - Tea
U.S.A	DARJEELING NOVEAU - Tea

The Tea Board of India has faced a number of hurdles, challenges and difficulties in its endeavour to ensure enforcement of the 'Darjeeling' word and logo. Registration in different jurisdictions and seeking redressal according to the legal requirements of each country are by themselves challenging tasks. Moreover, different legal provisions in different countries often result in failure to ensure enforcement even after long drawn legal battles, as discussed below.²²

In Japan, the Tea Board of India opposed the application for 'Divine Darjeeling' in class 30 (Darjeeling tea, coffee and cocoa produced in Darjeeling, India) filed by Mitsui Norin KK of Japan advertised on 29 February 2000. The opposition was mainly on three grounds, namely (i) 'divine' is a laudatory term and accordingly the mark for which protection is sought is merely 'Darjeeling', which is clearly non-distinctive; (ii) 'Divine Darjeeling' is misleading in so far as 'coffee and cocoa produced in Darjeeling' are concerned, all the more so because the district of Darjeeling does not produce coffee or cocoa; (iii) Darjeeling tea qualifies as a GI under international conventions including TRIPS and ought to be protected as such in Japan, a member of TRIPS. The JPO Opposition Board dismissed the invalidation action filed by the Tea Board of India primarily on the ground that the mark 'Divine Darjeeling' as a whole was not misleading or descriptive of the quality of goods. However, the non-use cancellation action succeeded, because the registered proprietor was not able to place on record adequate evidence to prove the use of the mark in Japan.

In yet another case the Tea Board of India brought an invalidation action against Japanese trade mark registration of 'Darjeeling tea' with a map of India in class 30 by Yutaka Sangyo Kabushiki Kaisa, on the ground that the registration was contrary to public order and morality. This action was rejected on the ground that 'the written English characters 'Darjeeling tea' and the map of India for the goods of Darjeeling tea are used as an indication of the origin and quality of Darjeeling tea and will not harm the feelings of the Indian people'. However, the non-use

²² The following discussion on cases relating to Darjeeling draws heavily on <http://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm>.

cancellation action filed by the Tea Board succeeded, because the registered proprietor was not able to place on record sufficient evidence to prove the use of the mark in Japan.

The French law does not permit any opposition to an application for a trademark similar or identical to a GI if the goods covered are different from those represented by the GI. The owner of the GI can take appropriate judicial proceedings only after the impugned application has proceeded to registration. The net effect of such a provision has been that despite India's protests, Darjeeling has been misappropriated as a trade mark in respect of several goods in class 25, namely, clothing, shoes and headgear. The French Examiner — even though he found evidence in favour of the Tea Board of India (i) on sufficient proof of use of 'Darjeeling' tea in France, and (ii) that the applicant had slavishly copied the name Darjeeling in its application — held that the respective goods 'clothing, shoes, headgear' and 'tea' are not of the same nature, function and intended use, produced in different places and sold through different networks. The Examiner also held that even if the applicant has slavishly copied the Tea Board's Darjeeling logo (being the prior mark), the difference in the nature of the respective goods is sufficient to hold that the applicant's mark may be adopted without prejudicing the Tea Board's rights in the name 'Darjeeling'.

In another case the Tea Board opposed the application against the advertised marks for Darjeeling in classes 5, 12 and 28 by Dor François Marie in France. The French Examiner rejected the Tea Board's opposition and held that the respective goods did not (i) have the same nature, function and intended use; and (ii) share the same distribution circuits. However, he held that although the applicant's mark constituted a partial reproduction of the Tea Board's prior figurative registration for the Darjeeling logo, the designated goods lacked similarity to that of the Tea Board's prior marks and the logo. Therefore, it may be used as a trade mark without prejudicing the prior rights of the Tea Board.

While, enforcement is not guaranteed, as is evident from the foregoing discussion, such legal battles involve huge expenses. In fact, a major challenge faced by the Tea Board of India relates to legal and registration expenses, costs of hiring an international watch dog agency and fighting infringements in overseas jurisdictions. Table 6 provides rough estimates of the legal expenses incurred by the Tea Board on these counts. These figures do not include administrative expenses including the relevant personnel working for the Tea Board, the cost of setting up monitoring mechanisms, software development costs, etc. It may not be possible for every GI right holder from a developing country like India to incur such prohibitive expenses on enforcement. The exorbitant costs involved in appointing an international watch dog agency for getting information on infringement and the costs involved in fighting a legal battle are likely to prevent a developing country like India from ensuring enforcement of its GIs in overseas markets, however genuine and strong the case may be.

Table 6

Legal Expenses on Enforcement of 'Darjeeling'	
Year	Expenses (US\$ 000)
1999 - 00	26.23
2000 - 01	54.6
2001 - 02	54.44
2002 - 03	77.08
2003 - 04	85.43
2004 - 05	130.09

5.8 Other Constraints Confronting 'Darjeeling' GI

There are certain other constraints in the way of adequate protection of the GI that are typical to the case of Darjeeling tea. While it is true that tea produced in various other countries are often passed off as Darjeeling tea, there are certain other nuances intertwined with the very system of trading of authentic Darjeeling tea that leaves room for the blending companies to take undue advantage of the brand equity associated with the name 'Darjeeling'. Historically, when the British developed the tea industry in Darjeeling in the nineteenth century, they put in place three distinct chains for its smooth functioning. The first chain, viz. the production system, consisted of the tea estates whose only function was to grow tea. The second chain comprised the system of tea auction, in which the Darjeeling tea was sold as a commodity. The third chain consisted of the tea-purchasing companies, which bought Darjeeling tea, blended it, branded it and then sold it. During the initial years of its development, all the three chains were being controlled by the British commercial interests. However, even today, the third chain is almost completely controlled by the foreign blending companies. The existing primary marketing system ensures that the lion's share of the Darjeeling tea that is produced is sold by the tea estates either directly or indirectly through the public auction in Kolkata (and to some extent in Siliguri) to the foreign buyers. Except for some 'single-estate' teas, a large proportion of Darjeeling tea, so sold to the foreign blending companies, subsequently reaches the end consumer under the brand names of those foreign blenders/packers. It is this predominance of the foreign blending companies in the trading chain of the Darjeeling tea that makes the process of GI protection more difficult owing to the modes of operation of these companies. Notably, most of the teas sold worldwide are in 'blended' form. The blenders/packers maintain a level of tasting consistency and price stability in their respective brand(s) by mixing teas procured from different sources. Although there is no process change involved in this blending stage, the blenders/packers justify the considerable mark-up in the retail price on the ground that they have to make considerable investments in propagating their blends in the form of different brands. In the case of Darjeeling tea, however, the Tea Board of India and the Darjeeling tea industry is of the opinion that as the Darjeeling brands and blends sell worldwide because of the unique characteristics that the consumers identify with the word 'Darjeeling', a blend in this case should comprise only of teas procured from different tea estates situated in the geographical area earmarked by the Tea Board under the definition of 'Darjeeling tea'. They maintain that if a blend contains less than 100% of authentic Darjeeling tea, then it should not be marketed using the 'Darjeeling' platform. Otherwise, the consumers would be misled in thinking that they are buying authentic Darjeeling tea, while, at the same time, the producers of authentic

Darjeeling tea would be deprived of the full commercial benefits emanating from the brand equity associated with 'Darjeeling'. The foreign blenders and packers, however, are of the opinion that the important issue here is whether the blend has the Darjeeling 'character' as determined by the tea tasters. They hold varied opinions as to the minimum allowable percentage of authentic Darjeeling tea in the blend, ranging from as low as 50% to as high as 90%. Against this backdrop, quite naturally, the maximum opposition to the entire endeavor on part of the Tea Board of India towards setting up an appropriate framework for an effective protection of 'Darjeeling' as a GI is forthcoming from the blenders and packers, who constitute an important and influential segment of the entire tea business network. This issue of blending is a contentious issue and the Tea Board of India is known to be engaged in a process of dialogues with the tea buyers in various importing countries of Darjeeling tea to arrive at a consensus. This is an on-going exercise to ensure that the interests of the producers and the consumers of authentic Darjeeling tea are protected, while at the same time not alienating the trading interests. The Tea Board is of the view that a partnership with the buyers in the major consuming countries, such as Germany, Japan and the UK, would be the only long-term solution to the problem of possible 'passing off' through the blenders.

6.1 Traditional Handicrafts of India

India has in its possession a very rich resource of handicrafts of diverse nature and type. Most of these crafts have some traditional knowledge (TK) associated with them. The Craft sector of India is also the second largest employment provider in the country after agriculture. The handloom sector alone provides employment to nearly 7 million people, which is expected to increase to 2 crore in the next five years. The sector has the potential for a multi-fold expansion and export. Exports of handicrafts from India has recorded a growth of 7.31% (in US dollar terms) in 2005-06 compared to that in 2004-05, crossing US\$ 3 billion mark (Table 7). The growth of the sector is indicative of an expanding potential that brings along newer opportunities of business, production, trade and employment. The need of the hour is an overall development of the craft sector through bridging traditional practices and techniques with the emerging requirements of the global markets. However, the continued production and further development of traditional handicrafts and artworks of India are often threatened by the disappearance of traditional skills often due to inadequate financial return to the people at the lower end of the supply chain. Another serious problem is copying and mass production by outsiders, owing to inadequate legal protection, which deprive artisans of their legitimate returns. It is in this scenario that many of the handicraft producers of India are taking recourse to the GI Act with the aim of securing better protection eventually leading to better returns.

Table 7
Statement showing export of handmade carpets and other Handicrafts during the period April –Jan 2005-06
compared to the corresponding period of April-Jan 2004-05
(Provisional)

(Rs. in crores)

(US \$ Million)

ITEMS	2004-05	2005-06	% age Increase/ Decrease	% Share of total	2004-05 @ 43.9796	2005-06 @ 44.2305	% age Increase/ Decrease
1	2	3	4	5	6	7	8
A. Carpet & other Floor Coverings							
1. Woollen	1905.36	1958.10	+2.77	89.80	433.24	442.70	+2.18
2. Silk	167.25	169.36	+1.26	7.77	38.03	38.29	+0.68
3. Synthetic	51.95	52.93	+1.89	2.43	11.81	11.97	+1.35
Total (A)	2124.56	2180.39	+2.63		483.08	492.96	+2.05
B. Other Handicrafts							
1. Art Metalware	2789.36	3004.34	+7.71	26.75	634.24	679.26	+7.10
2. Woodwares	502.45	583.88	+16.21	5.20	114.24	132.01	+15.54
3. H.P. Textiles Scarves	1641.04	1826.76	+11.32	16.26	373.14	413.01	+10.68
4. Embroidered & Crocheted goods	3135.72	3367.12	+7.38	29.98	712.99	761.27	+6.77
5. Shawls as Artware	38.24	74.67	+95.27	0.66	8.69	16.88	+94.25
6. Zari & Zari goods	160.93	207.60	+29.00	1.85	36.59	46.94	+28.29
7. Immitation Jewellery	132.86	186.75	+40.56	1.66	30.21	42.22	+39.76
8. Misc. Handicrafts	1903.28	1981.37	+4.10	17.64	432.77	447.96	+3.51
Total (B)	10303.88	11232.53	+9.01		2342.88	2539.55	+8.39
Grand Total (A+B)	12428.44	13412.92	+7.92		2825.96	3032.51	+7.31
Source : http://handicrafts.nic.in/							

6.2 State of Jammu and Kashmir (J&K) and Its Handicrafts Sector

Strategically located Jammu and Kashmir (J&K) constitutes the northern most extremity of India. The state of J&K comprises Jammu Province, the Vale of Kashmir and Ladakh. Jammu Province is bounded by the Ravi River to the east and the Jhelum to the west, and is bisected by the Chenab. To the north of Jammu lies the Pir Panjal range of the Himalayas, which separate the beautiful wooded and fertile vale of Kashmir from the rest of India. Kashmir is itself connected to the east by a series of high passes to Ladakh. Jammu lies in the foothills of the Himalayas, with easy communications to neighboring states of Punjab and Himachal Pradesh.

The main economic activities in J&K are tourism, horticulture and handicrafts. Handicrafts are therefore a major sphere of generating revenue. It is also a sector that provides livelihoods to a

very large number of people in urban and rural areas. According to official estimates there are 3.9 lakh families involved with the production of handicrafts and handlooms in J&K. For some artisans it constitutes full time activity whereas for others it supplements agricultural income. The annual production is worth Rs. 821 crores and exports constitute Rs. 595 crores. Other than tourism and horticulture this sector is the largest provider of livelihoods in the State.

The state of J&K abounds in ancient literature, language, religion, arts, crafts, dance, music, etc. J&K is not only home to a vast cultural and ethnic diversity but also the myriad arts and crafts that have been carefully nurtured for the centuries. J&K boasts of a rich heritage of a range of handicrafts, such as Pashmina shawls, Kani shawls, Silk carpets, Sozni embroidery, Paper machie, Walnut-wood carving, Numdah, etc., crafted by highly skilled craftsmen, creating distinct products. Kashmir handicrafts are also intertwined with the cultural heritage of the region and has linkages with all levels of society with various specialisations and sub-specialisations that add up to constitute an interdependent and organic world of handicrafts production. The production of a pashmina shawl, for instance, involves at least seven types of specialists from the yarn maker to the washer man. The vast cultural and ethnic diversity of Kashmir has enabled a variety of motifs, techniques and crafts to flourish on this part of the world. The various handicrafts are in tune with its age-old splendid civilisation.

The discussion on Kashmir handicrafts in this paper makes special reference to three categories that are already in the pipeline for getting registered as GI: 'Kashmir Pashmina', 'Kani Shawls', and 'Kashmir Sozni Craft'. The geographical territory associated with each of this GI is the entire state of J&K. However, it needs to be mentioned here that there exist many other handicrafts in J&K, which may qualify for GI protection, and efforts are already under way in that direction.

6.3 History and Uniqueness of Kashmir Shawls and Embroideries

The origin of many of the handicrafts of J&K dates back to centuries and these crafts are often associated with interesting stories from the pages of history. Kashmir has long since been famous for exquisitely embroidered shawls, stoles, scarves, saris, etc.

The shawl, or shoulder mantle, has been in existence in India in a variety of forms since ancient times, serving the rich as well as the poor as a protective garment against cold. Reference to shawls is found even in the Hindu mythological texts like the *Ramayana*, the *Mahabharata* and the *Atharvaveda*. Reference to shawls is also found in ancient Buddhist literature among the recorded inventories of woolen garments. Derived from the Persian word 'shal', which was the name for a whole range of fine woolen garments, the shawl in India was worn folded across the shoulder, and not as a girdle, as the Persians did. Though shawls are produced, worn and used as a warm protective garment in various parts of India, Kashmiri shawls are world-renowned.

Kashmir has an age-old tradition of shawl-making. There are three fibers from which Kashmiri shawls are made: wool, Pashmina and Shahtoosh (now banned). The prices of these three cannot be compared - woolen shawls being within the reach of the most modest budget, and Shahtoosh being once-in-a-lifetime purchase.

The art of Pashmina making in Kashmir is believed to be as old as 3000 years B.C. However, it is said that during the rule of the Mughal dynasty in India, Kashmir flourished as a centre of shawl-

making. The origin and development of the shawl industry in Kashmir may be attributed to a large extent on the geographical location of Kashmir, cut off as it is by the Pir Panjal range and to its position at the crossroads of some of Asia's great Trade Routes. Kashmir's relative geographical isolation ensured that a concentration of skilled workers could be built up and maintained. Its position *vis-à-vis* the trade routes of Tibet and Turkestan gave it virtually exclusive access to the raw materials needed for shawls. Connection to Afghanistan and Persia in the west and other parts of India in the south through the road network gave it access to a huge market for its shawls and other handicraft products.²³

The famous Mughal emperor Akbar was greatly enamored by the Kashmir shawls. Akbar encouraged the weavers to try new motifs, and also started the fashion of the twin shawl, where two identical shawls were sewn back to back, hiding the rough edges of tapestry weave, and giving the impression of a single, reversible shawl. The royal shawls were richly embellished with precious metals and stones. Incredibly soft, and lovingly and painstakingly crafted, few samples of these shawls survive to date and the handfuls that exist are treated as priceless world heirlooms.

Kashmir Pashmina Shawls

Pashmina is one of the most famous varieties of shawls produced in Kashmir since ages. Origin of Pashmina dates back to ancient civilisation. In the past, only rich and elite had the privilege of enjoying this luxurious fabric. Pashmina shawls were adored by the royal families. They adorned the court of Caesar and were the pride of the French queen, Marie Antoinette. Impressed with the unparalleled look of a Pashmina shawl, Emperor Napoleon presented it to Empress Josephine following which Pashmina became a fashion statement in France and slowly the shawl became world renowned.

Pashmina is an exceptionally light, soft and warm fabric made of *pashm* fibers obtained from the fleece of a central Asian species of mountain goat called Chyangra or Capra Hircus. These goats live at elevations of 14,500 feet (4,500 meters) and above, where temperature in winter rarely rises above minus 30 degrees centigrade. To survive the freezing cold of winter in such high altitudes the underbellies of these goats grow a kind of winter coat comprising two layers of wools: a coarse outer layer and a unique, incredibly soft inner layer, called *pashm*. With the coming of summer, these goats shed their warm winter coats. Every summer, people from Kashmir climb the mountains to collect these winter coats of Chyangra and comb it thoroughly to separate the finer *pashm* from the thicker outer layer of wool.

Pashm is long fine fibres, having fineness of 12 to 16 microns, with a special lustre. The fineness of *pashm* can be assessed from the fact that human hairs are approximately six times thicker than *pashm* fibres. Given such extreme fineness, the wool is too delicate for mechanical looms, and must therefore be spun and woven by hand. Pashmina is made of 100% *pashm* fibres using this fine hand spun yarn. It is a hand woven fabric in 3 weaves: twill, herringbone and diamond weave. One shawl requires about 24 ounces of *pashm* - the annual output of about 4 Chyangra goats.

Pashmina is made by traditional methods of processing, spinning and weaving by the artisans of J&K, whose ancestors have been in the occupation since ages. Thus this traditional art form has

²³<http://textiles.indianetzone.com/1/jammu_kashmir.htm>.

been handed down by one generation to the next. The making of Pashmina shawls is a labour intensive process. On an average it takes nearly 200-250 labour-hours to make a single pure plain pashmina shawl without embroidery.

The production of Pashmina shawls in Kashmir hovers around Rs. 200 crore per annum, while over one lakh people are involved in the sector in one way or the other.

Kani Shawls

Hand woven Kani shawl is renowned for intricate designs woven with the twill tapestry weave, where numerous Kanis or 'tujlis' (eyeless spokes) are used for localized weft weaving instead of a shuttle. It is a laborious and time consuming process, where every shawl is woven based on a written script '*Taleem*', of a pre-conceived design. The embroiders of Kani shawls were originally called rafugars or darners.

Kashmir has been famous for Kani shawls for many centuries. The *Ain-e-Akbari*, written during the era of Akbar, mentions these shawls. In the 18th century these shawls became so popular that merchants from all over the world used to come to Kashmir to purchase them. They were then worth their weight in gold.

During the late 18th century and early 19th century the designs of the Kani shawls became so complicated that instead of being woven as one piece, the shawls began to be woven in small pieces, often by different weavers. Due to the large areas of design to be woven, the pattern was broken down into fragmented parts, each woven separately, at times on separate looms, and then all these pieces were pieced together, rather like completing a jigsaw puzzle, and then they were stitched together by a rafugar. That technique is still continuing. The beauty of an original Kani shawl of Kashmir, however, lies in the fact that the stitches are almost invisible, and a completed shawl looks like a single unit.

The production of Kani shawls hovers around Rs. 150 crore per annum, while over six thousand people are involved in the sector.

Sozni Kashmir

Kashmir has a rich and age-old tradition of a variety of embroidery. Many kinds of embroidery are worked in this part of the world, including Sozni.

Sozni embroidery is a type of fine needlework done on fabric, using thousands of minute *sozni stitches* along with other stitches. A *Sozni stitch* is a type of couching stitch, which has a reinforcing stitch, laid over a basic stem stitch. Sozni embroidery uses traditional motifs and designs inspired by the flora and fauna of Kashmir.

Sozni embroidery has the following key characteristic features:

- Hand embroidery using a fine needle and threads of staple or silk;
- Embroidery of a fineness ranging from 200 to 400 stitches per square centimeter;
- Predominant use of the sozni stitch for outlining and filling in of the motifs;
- Use of traditional motifs and designs reflecting the flora and fauna of Kashmir.

The annual value of this sector hovers around Rs. 400 crore, while over 83,000 practitioners are involved in this sector.

6.4 Why do Kashmir Handicrafts Need GI Protection?

The foremost reason underlying the urgent need for GI protection for Kashmir handicrafts emanates from the rampant misuse of their hard-earned goodwill and reputation by imitations that are flooding the markets both in India and in various other parts of the world. Since Kashmir handicrafts are widely appreciated, plenty of imitations, especially in shawls and woolen fabric are available in the market.

In the case of Pashmina, one of the main threats comes from fabrics such as, Semi-pashmina, Silk-pashmina and other woolen shawls that are often being passed-off as pure Pashmina. Very often fabric for shawls being made on power-looms in Punjab (another state in northern India) is also sold as Kashmir Pashmina. However, the biggest threat to Kashmir Pashmina perhaps may be found in the international markets, where 'Nepal Pashmina' is being sold as original Pashmina. Perhaps due to wide publicity by the Nepal shawl industry, a misconception has by now become widespread that Pashmina is originally a product of Nepal and not of Kashmir. Even a google search reveals that there exists a number of web portals associated with sales of Pashmina that refer to it as originating from Nepal. In fact, this so called 'Pashmina' industry in Nepal is a major foreign currency earner for the country. There are over a hundred 'Pashmina' producing units in Nepal, out of which 95% are in the Kathmandu valley alone. Over 90% of 'Pashmina' manufactured in Nepal is exported and only 10% is consumed locally. Nepal 'Pashmina' is exported to around 40 countries, mainly in Europe, America and Asia.

However, a recent newspaper report²⁴ on Nepal 'Pashmina' reveals certain interesting facts about the current status of exports of Nepal 'Pashmina' and also raises serious doubts about the quality of these shawls, let alone the misuse of the name Pashmina. These are underlined below.

The report states that according to Nepal Pashmina Udyog Association (NPUA), in the recent years exports of Nepal 'Pashmina' have been going down steadily. Nepal 'Pashmina' is said to have earned a bad name in the international market after low-quality 'Pashmina' started to become part of the Nepali export kitty to the international market according to NPUA. **Even, polyester and woolen mixed materials are being exported in the name of Pashmina in recent days.** Nepali 'Pashmina' entrepreneurs say that it is also due to the break-neck competition in the international market. **Since Nepal 'Pashmina' could not compete in terms of quality and price, exports have started to go down, according to them.** According to NPUA, the problem is also due to the Nepal government's failure in defining 'Pashmina' till date. **International buyers like the US have now started buying 'Pashmina' from China and India due to low-quality Nepali exports.**

Whatever may be the current status of the so-called 'Pashmina' produced in Nepal, the fact remains that it poses a serious threat to the genuine Pashmina producers of Kashmir. As mentioned in the aforesaid report, even China sells the so-called 'Pashmina' shawls.

²⁴ *The Himalayan Times (2007).*

The Kani shawl industry is also not secure. Imitations of these shawls are now being produced in jacquard looms outside Kashmir. Same is the case of Sozni embroidery, which is also facing serious competition from cheap, machine-made imitations.

For the lay buyer it is difficult to distinguish between the real product and its imitation. But as Kashmiri traders and manufacturers readily recognise, the greatest harm are being done by those unscrupulous Kashmiri retailers and traders who sell these imitations posing as dealers in authentic Kashmiri products. While imitation result in immediate loss for the genuine producers/traders, over time such practices bring disrepute to Kashmir handicrafts as well as to the tradesmen. The distrust that starts developing among the consumers eventually retards the growth of the handicrafts market.

The ultimate losers in the process are those people who are involved in different stages of supply chain of the genuine Kashmir handicrafts, including the poor craftsmen who are heavily dependent on these sectors for their livelihood. They are either being driven out of the business in the face of competition posed by lower quality but also lower priced imitations or are forced to depress labour costs and cut back on profit margins in order to stay in business. Such a situation cannot continue for long. Unless suitable steps are taken the producers of authentic products may soon become extinct resulting in eventual destruction of valuable craft heritage and loss of traditional knowledge and livelihoods. Under such circumstances, the urgent need for GI protection for Kashmir handicrafts cannot be overemphasised. This is the first prerequisite towards preventing the misuse of their hard-earned reputation and goodwill.

There is also a remarkable unanimity of views between the government of J&K and the handicrafts industry of the state that the route to the revival of Kashmir handicrafts lies through building their brand image. Those who wish to promote Kashmir handicrafts strongly believe that Kashmir handicrafts have in them all those special qualities that can give competitive edge to the trade. They feel that the brand value of these products can be strengthened through effective promotion of the Kashmiri identity of these products. Thus the persuasive logic of brand building through brand promotion.²⁵ GI status can go a long way in brand-building and promotion of these products.

6.5 Enforcement Challenges

There is no denying the fact that enforcement of GIs associated with the aforesaid Kashmir handicrafts would be an extremely challenging task even within India, let alone in other countries. First, in India, both in Kashmir and outside, handicrafts are sold from a variety of formal and informal outlets making it a Herculean task to search for imitations. Moreover, there are so many varieties of blended and machine-made products available in this market that it would be a very challenging task to regulate this trade. As mentioned earlier, enforcement is an extremely expensive process, especially when it comes to foreign jurisdictions.

6.6 Initiatives Towards GI Protection of Kashmir Handicrafts

²⁵ Banerjee (2007).

The initiative towards ensuring GI protection for Kashmir handicrafts originated from the threat posed by the imitations as well as the felt need for brand building of these products in the national and international market. It was realised by the industry and the state government of J&K that the goal of brand-building of these traditional products needs to be realised through a multi-pronged process including protection of GI rights, design rights, quality bench-marking and certification. Hence, the J&K government commenced the process of GI registration in October 2004. The leading role in this respect was played by the Crafts Development Institute (CDI), Srinagar, an autonomous body set up by the Development Commissioner-(Handicrafts), Ministry of Textiles, Government of India (GoI) and the Department of Industries & Commerce (Directorate of Handicrafts), Government of J&K. CDI was established to work towards an integrated development of the handicraft sector, through training, education, research and consultancy. The institute commenced functioning in February 2004.

To start with, a 'Feasibility Study' was carried out by the CDI to zero down on the exact nature and scope of the initiative. The Development Commissioner (Handicrafts) provided the financial support for this study. The Study was undertaken over a period of five months - from November 2004 to March 2005. Based on an assessment of their respective economic potential, misuse of identity, and threats from national and international competition, some of the traditional handicrafts of Kashmir were initially short-listed for brand-building and protection. These were:

Pashmina Shawl

- Kani Shawl
- Sozni Embroidery
- Silk Carpet
- Paper Machie
- Walnut Wood Carving
- Numdah
- Katambandh
- Wooden Lattice Work.

The next step was research and documentation of the short-listed crafts. Study and documentation of each craft area covered the following aspects:

- Origin, practice, design variety, etc.
- Identifying uniqueness
- Outlining specifications.

The filing of applications with the GI Registry in Chennai involved the following steps:

- Preparation of applications in a legal format and filing
- Designing of GI Marks
- Constitution of a Society of artisans, to file the claim of ownership.

Three cases of 'Kashmir Pashmina', 'Kani Shawl' and 'Sozni Embroidery' were accepted by the GI Registry.

It needs to be mentioned here that given its technical competence, the GI applications were moved by the CDI. However, it was felt that a technical body like CDI was not the appropriate agency to become the registered proprietor of the GIs, once awarded. For this purpose it has been proposed that a group of practitioners, mainly consisting of artisans, will be constituted as a 'registered society', called 'Tahfuz'. The Memorandum of Association of this society has been drawn up.

The society is in the process of being registered under the provisions of the J&K Registration of Societies Act. This society would be the ‘registered proprietor’ of the aforesaid GIs of Kashmir.

6.7 Quality Control and Certification

As mentioned earlier, it is imperative under the GI Rules of India that a quality assurance mechanism should be in existence and that there should be an inspection structure for the regulation of the territorial dimension. These are very important steps since the eventual success of the entire scheme of protection under the GI Act would depend to a large extent on whether the products actually conform to the benchmarks and territorial limits that have been claimed in the applications.

The applications made by the CDI have undertaken to set up institutions in due course. Efforts are already under way in that direction. A study²⁶ has recently been undertaken on behalf of the CDI to explore the ways and means of developing an appropriate certification mechanism and the related strategies for brand building and setting up of a regulatory body to monitor and check misuse of the GIs.

Notably, a window for the creation of a scheme of certification exists in the Memorandum of Association (MOA) of Tahfuz.²⁷ However, the aforesaid study is of the view that although in principle, Tahfuz can set up the certification mechanism on its own, since Tahfuz consists of the ‘registered proprietors’ and possibly future ‘authorized users’ of the GIs, certification by its own mechanism would amount to a sort of self-certification, which may not carry sufficient weight or credibility. Hence, it is recommended by the Banerjee Report that Tahfuz may place a request in front of the the Government of J&K to set up a special certification mechanism for the purposes of GIs under the existing Jammu and Kashmir Handicrafts (Quality Control) Act, 1978. It is further recommended that the proposed certification authority would use the bench marks set out in the GI registration and would permit the use of the proposed GI mark on the certified product. Besides, the manufacturers whose products would be presented for certification would not be required to make a fresh application for license with the proposed certification body as they would already be registered with Tahfuz, either as ‘registered proprietors’ or as ‘authorized users’ of their respective GIs.

It has also been underscored by the Banerjee Report that while applying the benchmarks for certification or while redressing consumer complaints regarding some GI-products, the proposed certification body might need to turn to a laboratory which would confirm whether genuine raw materials were used or whether the yarn, shawls, etc. were genuinely been made by hand. Since, no such facility is available in J&K at present, recommendations have been made towards establishment of such facilities. Importantly, in the course of the Banerjee study, visits were made to the Wool Research Association in Thane and to the Textile Committee office and laboratory in Mumbai (both in the western state of Maharashtra), with the aim of understanding the essential requirements for such a laboratory. It was revealed from these visits that two kinds of tests are required for the aforesaid purposes: (i) fibre identification test, and (ii) loom origin test. The

²⁶ Here the study refers to Banerjee, 2007.

²⁷ Article 3 (v) of the MOA provides the following as one of the aims and objectives of Tahfuz:

To implement, or facilitate the implementation of, a scheme of certification of the handicrafts of J&K in order to improve the quality of handicrafts and build confidence among buyers of such handicrafts.

instruments required to undertake these tests were also identified. The Banerjee Report is of the view that it is possible to set up all the instruments and tests in Srinagar. In fact the aforesaid institutions of Maharashtra would also be in a position to advise in this matter as well as to train personnel who would handle the machines and run the laboratory. However, in order for the laboratory to have the necessary credibility it is recommended by the Banerjee Report to go for accreditation with an appropriate international accreditation body.

It has furthermore been recommended that the proposed certification body may also be entrusted with the task of regulating the use of the region or locality mentioned in the GI applications, as required by the GI Rules.

The Banerjee Report maintains that:

*Whether more GI applications are made on behalf of Jammu & Kashmir or not, it would be of great value to reshape the character of **Tahfuz** over the next three to five years to make it take on the functions of a Board in the making. If the experiment succeeds the larger edifice of the Board including all the functions discussed above may be integrated into Tahfuz through an active collaboration between the government and the trade.*

It may be noted at this juncture that the present phase of conceiving and implementing a set of measures to regulate the quality of high value handicrafts of Kashmir is marked by a serious consultative process involving the political leadership, the administrative system, the industry - represented by the Kashmir Chamber of Commerce, as well as other bodies, high level technical expertise and legal advisors. This is different from an older practice where the Government alone initiated measures, which the trade had perforce to follow. This kind of concerted effort may perhaps be attributed to the shared realisation by all concerned that the future of high value handicrafts of Kashmir lies in establishing a brand image, which may be built around the authenticity and uniqueness of these crafts. As this sector is regulated through the consultative and participatory process that is ongoing it may be expected that a lot of critical areas, such as raw material supply chain, availability of credit to artisans and weavers, proper pricing and higher visibility would also be addressed.²⁸

6.8 Promotional Efforts

A promotion and awareness building campaign is also under conceptualisation, with the aim of generating appropriate publicity and understanding about GI and the quality standards, amongst all stakeholders including the end consumers. The Banerjee Report also recommends a wide ranging publicity among media, consumers, the intelligentsia and those involved in making genuine products so that the implications and advantages of the GI registration and certification are clearly understood. It is noted that the process of publicising either through media or through workshops and seminars, and the effective visibility of the GIs would help to build the Kashmir brand in handicrafts all over India and also in other relevant international markets.

²⁸ Banerjee (2007).

7. Operationalisation of the GI System and Its Possible Implications for India: Select Issues and Concerns

7.1 Identification of GIs

It is worth highlighting here that the identification of the products eligible for protection as GIs is in itself a crucial task that requires expertise from specialists. This is because, the products to be protected are not necessarily those, which flatter the national pride and which have always, been known by the population.²⁹ Although from a legal angle, ‘reputation’ of a product (linked to its geographical origin) would in itself suffice for it to be protected as a GI, as per the TRIPS definition, from an economic point of view it is important to assess, among other things, the commercial status/prospect of a GI-product in the domestic and export markets and the potential of its GI-status in contributing to its future growth.

As indicated by the case study of Kashmir handicrafts, identification of suitable candidates for GI protection is getting carried out in a systematic manner at least in certain cases in India. It may be mentioned here that the Ministry of Commerce and Industry (MoCI), Government of India (GoI) has commissioned a study to a research organisation in India, one of the key objectives of which is the identification of potential GIs. The study is reportedly covering around 115 products.

7.2 Commercial Potential of GIs

The willingness of at least a niche section of the consumers to pay a premium for GI-products has been revealed in quite a few empirical studies, although mostly in the developed countries. Such anecdotal evidences bear testimony to the economic value of these distinctive indications. However, actual realisation of their potential benefits is contingent upon a range of other factors. In other words, there may exist a number of hurdles in actualising the economic potential underlying a protected GI. Apart from effective enforcement of GIs in the relevant markets (domestic and export), much depends on the strategies adopted for marketing and distribution of the product, and its branding and promotion – tasks that are neither costless nor easy to perform, especially for the stakeholders from a resource poor country like India.

Given that the GI initiative is at a rather nascent stage in India, it is too early to assess the potential of GI protection in fetching commercial benefits to the stakeholders. However, as revealed from the case studies, there is ample realisation of the fact that challenges are tougher after the registration than before. Hence, initiatives are already under way towards brand building, promotion, enforcement and so on. These are important steps forward in the right direction. It is also encouraging to note that such steps are already fetching the beneficiaries some positive returns. As per the feedback received from the stakeholders of the Chanderi GI, even at such initial stage, they have started getting some benefits. They maintain that the GI registration and subsequent publicity has increased awareness in the Indian market about the authenticity or otherwise of sarees being sold as Chanderi. Hence, many of them who were earlier buying

²⁹ Croze, 2006, p.6.

imitations unknowingly are now resorting to genuine Chanderi. As per the stakeholders of another GI, Pochampalli Ikat, subsequent to GI registration in December 2004, they have noticed around 20% increase in customer inflow. Given that the initiative has just begun and even the brand building efforts are yet to gear up properly, the aforesaid experiences seem to be quite optimistic.

Commercial exploitation of many an Indian GI in the export markets may not be an easy task, for reasons that would be discussed in greater detail below. More so because, many of these products do not yet have a ready export market. In case of such products, it may be a longterm task. However, it needs to be highlighted here that given the fact that the survival of many of these authentic products is at stake in face of competition posed by cheap imitations produced and sold within India, even if the GI initiative helps them regain those segments of their domestic markets, that may in itself be a big leap forward.

7.3 Registration in Foreign Countries and Enforcement

While registration in the domestic market is a relatively manageable task, what is much more challenging is the registration in various foreign countries as per the legal requirements of those countries and the subsequent enforcement of the GIs in situations of misappropriation. Some of the key constraints that are likely to be encountered in this respect, among others, are:

- Technicalities and costs involved in the registration process in different countries;
- Exorbitant expenses involved in appointing a watch-dog agency to get information on misappropriation of GIs;
- Huge financial resources needed for fighting legal battles in foreign countries; etc.

Just like in India, while applying for GI-registration in other countries, claimants to a GI are required to codify distinctive facts related to their products, production processes, uniqueness, geographical origin, etc. Specifying these facts in rigorous legal language, as per the requirements of a country concerned, is not only costly, but also requires technical expertise. In Europe, for instance, such one-time effort alone could cost around US\$20,000.³⁰

The enforcement of GIs in foreign jurisdictions is an even greater challenge. Hiring the services of a watch dog agency is a very expensive proposition as is fighting legal battles in foreign countries, generally with the help of foreign law firms, who charge exorbitant fees, at least as per the developing country standards. Darjeeling tea is the only GI of India that has already confronted some such challenges. The experiences of the Tea Board of India in this regard and the magnitude of the expenses it had to incur in the process of enforcement (as discussed earlier) clearly indicates the hurdles involved in the whole process. Furthermore, as is evident from the experiences of the Tea Board, different legal provisions in different countries often result in failure to ensure enforcement even after long drawn legal battles. Hence, enforcement would undoubtedly be one of the greatest challenges facing the stakeholders of Indian GIs in their endeavour to exploit the commercial potential embedded in this IPR.

³⁰ *ibid.*

7.4 Marketing and Promotional Efforts

While domestic market may be a relatively easier proposition to handle, marketing and promotion of GI-products in various export destinations is a much more challenging and tricky task. GI producers may have to adopt different distribution channels in different countries for selling the same product. For instance, in case of agro-food products, selling through retailers and supermarkets may be the best option in countries with highly concentrated supply chains (e.g. the UK); whereas, using local markets, direct selling and specialised outlets may turn out to be a better option in countries that are dominated by such marketing avenues (e.g. Italy, parts of France, etc.).³¹ Furthermore, producers of GI-products may have to contend with the economic power of various intermediaries to reach the market. Processors, for instance, are increasingly penetrating supply chains of agro-food products to substantially control most aspects of the production process, often making the primary producer significantly dependent on them. In the case of coffee and tea, where India has quite a few GIs, a handful of processing companies control a very large part of the global trade. Equally problematic is the position occupied by a handful of retail companies, on account of their growth and concomitant economies of scale and scope.³² Given such complexities, an appropriate marketing and distribution strategy is an essential prerequisite for a GI to act as an effective economic tool.

It is also important to recognise that the market potential for this ‘niche’ is contingent on the consumer recognising and valuing the product-place link. Hence, success in exploiting the economic potential of a GI is, to a great extent, dependent on effective marketing and promotional efforts to develop consumer perceptions about the product and its quality. Building up reputation about a GI-product is not an easy task, however. It takes a lot of time, patience, money, quality control and well-crafted marketing strategy to create a valuable GI. Champagne, for instance, took as long as 150 years.

It is a good sign that the stakeholders of Indian GIs have already started realising the importance of appropriate marketing and promotional strategies. As discussed earlier, various efforts are already under way in the case of all the GIs considered in this study. However, these initiatives are only beginning in case of most of the Indian GIs and given that many of them are facing huge challenges from imitations, such initiatives towards brand building and promotion can at best be called very late. A well-crafted strategy- not only for the short run, but also for the medium to long run; a lot of sincere efforts; and huge funds are some of the essential prerequisites for such promotional efforts to create any impact.

7.5 Protection of Traditional Knowledge

In the light of the growing importance attached to traditional knowledge (TK) and related concerns about preserving cultural and biological diversity, protection of TK has assumed enormous significance in the recent past. Certain intellectual property (IP) mechanisms are considered to be more suitable for the protection of TK than others. GI is often referred to as one of those mechanisms because GI as an instrument of IP protection has certain peculiar features, which in

³¹ Rangnekar 2004, p.33.

³² Rangnekar, 2004, pp.27-29.

contrast to other IPRs, are considered to be relatively more amenable to the customary practices of indigenous communities.³³

- Knowledge remains in the public domain,
- Rights are (potentially) held in perpetuity,
- The scope of protection is relatively circumscribed.³⁴

In addition to the above, GIs are considered to be free of the many adverse socio-economic results of corporate control and accumulation of IPRs. However, the aptness of GI for protection of TK is not free from limitations. The foremost problem emanates from the fact that while GIs protect products from misappropriation of their geographical origin-based reputation, they can not protect the knowledge embedded in their production process, which often form part of the TK of the communities involved in their production. Notwithstanding such caveats, it may still be asserted that to the extent that products draw on distinctive traditional methods of production that have been preserved and nurtured over time by communities specific to a region, GIs can be used as a legal tool to develop, market and protect a brand.³⁵

As revealed from the case studies on Kashmir handicrafts, despite India's rich heritage of handicrafts and the associated indigenous knowledge, this sector in various parts of India have been facing serious challenges in the way of their survival. In face of competition from cheaper machine-made imitations or other competing products, these sectors are grappling to stay in business. To reduce the cost of production in face of such competition, manufacturers or traders often cut down on the wages of the artisans, who actually produce the crafts on the basis of their knowledge inherited from their ancestors. Poor working conditions, low wage and insecurity often force these artisans to move to greener pastures. If this trend is allowed to be continued, much of the rich artistic heritage of India and the associated TK might become extinct in the course of time. From that perspective, GI protection and its effective enforcement may go a long way in helping these crafts to survive, by way of ensuring better financial return. However, whether GI protection can result in better financial conditions for the people involved in the lowest end of the supply chain, like the artisans or the workers, is something that needs to be investigated at the ground level.

³³ Rangnekar, 2002, p.15.

³⁴ For further details, refer to Das, 2007, pp. 3-4.

³⁵ Downes & Laird, 1999.

7.6 Can GI Protection Benefit the Artisans or Workers? – The Next Stage of the Project

In order to examine the socio-economic implications of a GI for the communities involved, it is essential to map out the entire supply chain of the product and to assess the number of people associated with each layer of the supply chain. This is what is proposed to be done at the next stage of the project.

It is important to underscore in this context that the process of GI-registration may itself raise substantive issues concerning reorganisation and governance of the supply chain of the product. In seeking protection, the relevant interested parties must specify, among other factors, the distinguishing characteristics of the product; its production process; and details concerning its link to its area of geographical origin. This process may entail some reorganisation of the product's existing supply chain, thus generating new economic opportunities for some while creating problems for others. There may be a number of specific tasks to be completed while reorganising the supply chain. These include, among others, agreeing codes of practice and defining the GI-product; developing certification schemes and methods of governance; formulating written and/or unwritten contracts to mediate the transfer of intermediate goods within the supply chain; managing production at various stages of the supply chain; promoting and protecting the product; etc.³⁶

Thus, while GI protection may indeed strengthen the sector concerned by yielding financial benefits, these benefits may not be shared equitably among various stakeholders along the supply chain of the product. It can safely be assumed that firms within a supply chain would be differentially endowed in terms of economic power, either on account of their particular location on the supply chain or for simple economic reasons like size, liquidity, etc. Consequently, firms with superior bargaining positions may be tempted to appropriate a disproportionate share of the economic value generated from securing protection.³⁷ Hence, higher price received by a product on account of GI-protection may be confined to the more powerful actors on the upper stream of the supply chain and may not get percolated to the weaker sections of the chain downstream, thereby nullifying to a large extent, the development implications of GI-protection.

Given such possibilities, the study would attempt to explore distribution of the financial returns from the product among different players of the supply chain before and after GI protection. The objectives would be to examine:

- Whether the communities are benefiting from GI-protection and if so, to what extent?
- Which groups (e.g. growers, processors, manufacturers, distributors, exporters, etc.) are benefiting from the availability of GI protection?
- Whether GI protection has resulted in any change in the relative distribution of benefits across different players of the supply chain.

While the ground realities of the socio-economic implications of the cases considered in this study are yet to be explored, certain observations may be relevant at this juncture.

³⁶ Rangnekar, 2004, pp. 19-23.

³⁷ Rangnekar, 2004, p. 22.

Kashmir Handicrafts

While the handicrafts industry of Kashmir are grappling with crisis and vulnerability, the worst affected in the process are the poor artisans who are dependent on these crafts to eke out a living. The realities of the artisans' lives are hard and the conditions of work are poor and wages may be as low as a dollar per day or even lower. It is not surprising that skilled artisans are being lost of manual work or street hawking and this reality is already threatening some sectors.

The challenges posed by cheap imitations have made things even worse. Manufacturers often argue that it is nearly impossible to compete with the rates at which fake goods are sold. Therefore there is little option but to compromise on the quality of the raw materials and squeeze wages of artisans. To the extent this argument holds, it may be expected that if better protection of these crafts through the GI initiative eventually results in better financial return to the Kashmir handicrafts, a portion of such increased return may percolate down to the artisans downstream the supply chain. Given the fact that the entire GI initiative has come as a concerted effort among all the stakeholders including the government, there are reasons to be optimistic about at least some improvement in the status of the artisans. However, it should be kept in mind that the question of the trickle-down effect would be relevant only if the entire GI initiative becomes successful in terms of implementation and enforcement. The real challenges lie there and not in getting the GIs registered in India.

Darjeeling Tea

In order to make a conjecture on whether the labourers of the Darjeeling tea industry are likely to benefit from a better protection of this GI, it is necessary to understand the system through which tea plantation workers are compensated in Darjeeling and other tea plantation regions of India.

When tea cultivation started there, Darjeeling was a sparsely populated hamlet. However, tea, being a labour intensive enterprise, required sufficient numbers of workers to plant, tend, pluck and finally manufacture the produce. In order to meet this high demand for labour, immigrants belonging to the Gorkha community were brought in from the neighbouring country Nepal. Even today, the work force consists mostly of people belonging to this community.

The Darjeeling tea industry at present employs over 52 thousand people on a permanent basis. A further 15,000 persons (approximately) are engaged during the plucking season, which lasts from March to November. Apart from such direct employment, a large section of the hill population of Darjeeling earn their livelihood from the peripheral sector of the industry, which consists of transport, supplies, repair, establishment, etc. It is estimated that the Darjeeling tea industry provides employment directly or indirectly to about 50% of the population of Darjeeling district. Hence, a vast population is dependent on this industry for their livelihood.

The employment is on a family basis and is passed on from one generation to the next. In most of the gardens it is the third or fourth generation of workers who are employed. A striking feature of the work force of the tea gardens of Darjeeling is that more than 60% are women. This is because of the perception that all field jobs, such as weeding, sickling, plucking of tealeaves, is well handled by women workers.

Conditions of work in the tea plantations are governed by the Plantations Labour Act, 1951. This Act is administered by the State Governments. The income of a permanent garden worker is half in the form of cash and the other half by way of perquisites. According to the Plantation Labour Act, 1951, permanent workers are entitled to perquisites from the management in the form of free accommodation, drinking water, free medical facilities, children's education, subsidised cereal ration, clothing, provident fund and other fringe benefits.

As far as cash wages are concerned, the payment is based on piece rates- the 'hazira' and 'ticca'. The 'hazira' is the daily wage paid to each worker on completion of a particular task being allocated for the day. The wage is Rs. 41.80 per day, but daily rated workers engaged in certain jobs other than plucking get additional compensation over and above the daily wages at the rate of Rs. 2 for garden jobs and factory works as per the Plantation Labour Act, 1951. The latter two categories have been lumped into one. 'Ticca' refers to over time work as well as to extra plantation work given in contract.

In order to compensate for the demand for extra labour during the plucking season, the management employs seasonal labours, usually women from the garden. They are also known as 'biga' workers. Their wage is based on the quantity of green leaves plucked. In the absence of any stipulated norm, the wage rates of these 'biga' workers are found to vary from one garden to another. The average quantity of tealeaves plucking stipulated per day is 8.5 kg; anything above it is 'ticca', which is paid at the going rate.

Wages of tea plantation workers in India are determined through a process of collective bargaining. Wages of Darjeeling tea plantation workers are revised every three years through tripartite settlements, in which the workers are represented by the unions.

Given such a system, it is unlikely that even if better GI protection results in a higher premium for Darjeeling tea, it would automatically percolate down to the workers. Much would depend on many other factors, including the bargaining power of the labour unions. However, if GI protection results in an overall improvement in the crisis-ridden Darjeeling tea industry, it may create room for the labour unions to bargain for a higher wage and better perquisites eventually.

8. Role of the Governments

One common feature that has come up from all the cases considered in this study is that all these initiatives are taking shape with direct or indirect government support, along with the involvement of the industry concerned. The reasons are not far to seek. Some of the reasons why the central and/or state governments may have to play a proactive role, at least during the initial stages of registration and maintenance of GIs in a developing country like India, are enumerated below:

- As mentioned elsewhere, identification of the indications to be protected as GIs is in itself a tricky task. While certain GIs may be worth protecting due to their existing/potential export values, certain others may be important to protect from a rural development perspective. Here relevant central or state government departments/agencies can play a crucial role. As mentioned earlier, in Kashmir the Feasibility Study for identification of potential GIs was commissioned by the Craft Development Institute (CDI), Srinagar with funding support from the Government of India.

- The usefulness of GIs is conditional on the ability of local producers to organise themselves into associations. As reputation embedded in a GI is the collective contribution of previous and contemporary generations, GIs are a particular type of public good, e.g. ‘club good’. Consequently they confront collective action problems in their provision. Third party agencies representing the interests of various producer groups located at various points along the supply chain may be best suited in solving these collective action problems.³⁸ Semi-governmental bodies may often turn out to be the appropriate form of third party agency in this respect. The governments may also have to play other crucial roles in this sphere, say, for instance, in creating awareness and offering seed-grants or concessional loans to communities to mobilise themselves.³⁹ The efforts towards the creation of Tahfuz under the able leadership of CDI (which itself was created by government initiative) as the appropriate ‘registered proprietor’ of Kashmir handicrafts-GIs and the eventual broader role of Tahfuz as conceived in the Banerjee Report is an appropriate example in this context.
- While applying for GI registration in India or in other countries, claimants to a GI are required to codify distinctive facts related to their products, processes, origin, etc. Specifying these facts in rigorous details is not only costly, but also requires technical expertise. Here governmental/semi-governmental agencies may have a role to play in assisting the communities that are not equipped enough to deal with such technical and costly ventures. Again, while CDI is not intended to be the ‘registered proprietor’ of the Kashmir handicrafts GIs, its technical expertise has helped these GIs at the initial stages of filing of the applications.
- Quality lies at the heart of the concept of GIs. Empirical research using hedonic price technique has revealed that consumers’ willingness to pay a premium for a GI-product is strongly correlated to its quality. In other words, consumers may pay a premium only if quality promises are delivered. The importance of quality and its maintenance for a GI to be successful underscores the need for putting in place an inspection structure that would monitor the working of various actors along the supply chain of the product so as to ensure compliance of the product with its specifications (codified during the GI-registration). Designated public inspection authorities may make an effective inspection structure for this purpose. The mechanism put forward by the Tea Board of India for ensuring the supply chain integrity of Darjeeling tea is an appropriate case in point. Quality control and certification mechanisms involving governmental agencies have already been recommended by the Banerjee Report for Kashmir handicrafts as well.
- The general conclusion of various empirical studies regarding promotion and marketing of GI-products is that this is the weakest link in the supply chain. However, as mentioned elsewhere, realisation of commercial potential of GIs depends, to a great extent, on adoption of appropriate marketing and promotional strategies. Here governmental/semi-governmental bodies can play a very effective role. More so because such initiatives are extremely cost-intensive and time-consuming efforts. Various governmental/semi-government agencies in India are indeed playing a significant role in this respect, as revealed from the case-studies.
- Enforcement is another challenging area where governments can play a significant role. As mentioned earlier, be it the appointment of a watch-dog agency or fighting the legal battles

³⁸ Rangnekar, 2004, p.33.

³⁹ Waglé (2007), p.25.

in foreign jurisdictions, each process involve huge expenses. It can safely be asserted here that the enforcement of the Darjeeling brand has become possible on several occasions in various countries predominantly due to the financial backing of the Tea Board of India. Stretching the argument a little further, it may also be pointed out here that if a case pertaining to misuse of a GI comes before the Dispute Settlement Understanding of the WTO, it is the state that has to take up the responsibility of fighting the legal battle.

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