A.1 Statement of the Problem

Geographical Indications (GIs) designate products that originate from a particular region or country and have a unique character due to their particular qualities and production methods. A GI is considered a public right, owned by the state or a collectivistic entity, with the government being in charge of registering and administering it. In the present expanding global economy GIs are significantly emerging as an important intellectual property. In today’s world Geographical indications are considered as important intellectual assets in relation to a variety of goods. Geographical Indications stand at the intersection of three hotly debated issues in International Law: International Trade, Intellectual Property and Agricultural Policy.

Because of the diverse ways in which the protection of Geographical Indications evolved, there was no universally accepted terminology. Although they are part of one of the oldest intellectual property regimes, there is difference in opinion regarding the meaning of their nature unlike other categories of intellectual property rights like Patent or Trademarks, where there is a general definition accepted worldwide, but in the case GIs there is not a single definition or a single terminology. GIs are closely interrelated with and seemingly identical to two other varieties of intellectual property recognized in the earliest international treaties: “appellations of origin” (AO) and “indications of source”. These are supplemented by the European Community’s two kinds of agri-food GIs: protected designations of origin (PDO) and protected geographical indications (PGI). The first international legal definition of an appellation of origin was specified in 1958, in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Article 2 (1) of this Agreement states that:

The ‘appellation of origin’ means ‘the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors’.

The Lisbon Agreement also defines “country of origin” as:
The country whose name or the country in which is situated the region or locality whose name constitutes the appellation of origin which has given the good its reputation for the quality and characteristic.

According to these definitions, an AO should always be a name which designates a country, region or locality. Also, it is fundamental that a good bearing the name exhibits quality and characteristics attributable to the designated area of geographical origin. Thus, an AO designates a given quality and characteristic of a good originating from a certain geographical origin, as exemplified by goods such as Darjeeling Tea, produced in the hilly regions of the Darjeeling district of West Bengal and known for its unique taste, texture and qualities.

Accordingly an Indication of Source means “An indication referring to a country or to a place situated therein as being the country or place of origin of a product”. “Indications of source” are characterized by a link between the “indication” and the “geographical origin” of the product, which may be a certain country or a place in a country. Such indications are also referred to as “country of origin” indications. The indication in an “indication of source” need not necessarily be a geographical name. Words or phrases that directly indicate geographical origin, or phrases, symbols or iconic emblems indirectly associated with the area of geographical origin may constitute indications of source. Thus, it refers to a sign that simply indicates that a product originates in a specific geographical region, for example, labels saying “Made in India”, “Swiss Made” or “Product of USA”. Unlike AO, an indication of source need not represent a particularly distinctive or renowned quality associated with the product’s origin, although both designations refer to geographical locations.

The term ‘geographical indication’ has been chosen by WIPO to describe the subject matter of the TRIPS Agreement for the international protection of names and symbols which indicate a certain geographical origin of a given product. In this connection, the term is intended to be used in its widest possible meaning. WIPO defines GIs as:

A sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.

WIPO chose to use the term “geographical indications” instead of previously used terms like “indications of source” or “appellations of origin” to increase the amplitude
of its meaning. WIPO has indicated that “reputation” with respect to GIs is mainly related to the history and historical origin of the product, an attribute more consistent to products of traditional knowledge. For GIs such as “Basmati rice”, the quality of the rice from the region denoted is closely connected to the reputation of the product connoted by the symbolic name. As such, the protection extends not only to the term “Basmati” as denoted in reference to the region of Punjab, but also to the reputation of the product that the term connotes, the traditional method of production developed over time, and the cultural aspects of the product. This distinction is significant in that the content of the rights in the latter exhibits “many of the hallmarks of a property right,” while the former grants a “mere right of action for misrepresentation – easily justified in terms of honest trade and consumer protection.”

The TRIPS Agreement is the first multilateral agreement to have introduced the concept of “geographical indications” in a ground-breaking manner. TRIPS use the term “geographical indication”, though the writers prefer the term “geographic indication” to describe the concept. It is also sometimes called “geographic indicator”, “geographical indicator”, or “geographic designation”. Article 22 (1) of the TRIPS Agreement 1995 provides the most extensive definition of Geographical Indications:

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.

Geographical Indications are similar to AOs in that both associate the quality of a good with a geographical location identified by an indication. Scope-wise, Geographical Indications are wider than “appellations of origin” because GIs are not restricted to the names of geographical locations. Other indirect references to geographical locations such as pictorial symbols may also be included under the definition of GIs, as long as they can identify a good with “a given quality, reputation or other characteristic” as originating in a territory, region or locality in the territory.

“Reputation” in the protection of GIs may arise not necessarily from natural factors emanating from climate or soil quality of the product but from other human factors in the geographical origin also such as local inventiveness or the traditional knowledge or know how used in the place where the product originates. Such factors must contribute to the distinctiveness of the product, i.e., its capacity to distinguish itself
from other products, and the reputation must be assessed, *inter alia*, from the consumer’s perception of the indication. The WIPO maintains that GIs can also ‘highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions’. The *European Court of Justice* in the *Feta case* argued that there was a close and important interplay between natural geographic factors and human innovation in the making of feta cheese. In the case of feta cheese, this interplay was said to include the development of small native breeds of sheep and goats which are extremely tough and resilient, fitted for survival in an environment that offers little food in quantitative terms but, in terms of quality, is endowed with an extremely diversified flora, thus giving the finished product its own specific aroma and flavour. The interplay between the natural factors and the specific human factors, in particular the traditional production method, which requires straining without pressure, has thus given Feta cheese its remarkable international reputation.

From this swirl of definitions, the most important conclusion to be drawn is that the nature of GI protection is completely different not only according to the countries but also according to the categories of the products concerned.

It is pertinent to mention the following quote from a WIPO document in order to understand the concept of geographical indications:

Geographical Indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorised parties is detrimental to consumers and legitimate producers. Consumers are deceived into believing that they are buying a genuine product with specific qualities and characteristics, when they are in fact getting an imitation. Legitimate producers are deprived of valuable business and the established reputation of their products is damaged. Geographical Indications are a form of intellectual property rights that do not protect novel elements but rather an accumulated goodwill built up over the years. Historically, the concept of geographical indications has been closely related to the notion of *terroir*, literally “soil” or “terrain”. The term connotes a limited geographical area, whose geology, topography, local climate, flora and other factors impart distinctive qualities to
products originating there. Thus the concept of *terroir* expresses the connection between the geographical location where a food or beverage is produced and the quality or other characteristic of the product. *Terroir* may also comprehend the human element of the geographical environment, i.e., the skilled exercise of techniques and knowledge acquired, developed and handed down over generations.

GI applies to a specific region within a given state. The relevant region can be very large, and in some cases encompasses an entire state; even the name of a Member State can be recognised as a GI, as in the cases, for example, of ‘Darjeeling Tea’, ‘Irish Whiskey’, ‘Mysore Silk’ and ‘Canadian Rye Whisky’. Typically, national rules limit the use of a given GI to producers who, in addition to residing in the designated region, follow specified manufacturing practices and use particular ingredients. These rules aim to ensure that the authentic and special quality claimed for the protected good is present in all products that carry the GI. European case laws indicate that, when considering the grant of a defined geographical area, the size of the area is immaterial. In 2005 the *European Court of Justice* held that Greece had the exclusive right to call its famous salty white cheese ‘feta’. The indication ‘Swiss-made’ is also a protected GI for watches. Hence, within a GI-protected region there may be numerous distinct and competing producers.

GIs could be iconic symbols or emblems like the Eiffel Tower to designate a French good, or the Taj Mahal to designate an Indian good or the Statue of Liberty to designate an American good. Moreover, denominations that are not ‘direct geographical names’ (such as Basmati) are also feasible.

GI protection means that producers outside a designated region cannot use recognized GIs, no matter how similar their product is to the GI-protected product. Even the phrase *methode champenoise*, which denotes a product or process method, rather than any regional quality *per se*, has been held to be improper for German producers of sparkling wine to employ on their labels. In the *Prosciutto di Parma case* before the European Court of Justice, the *Conzorio del Prosciutto di Parma* successfully sued two UK firms that imported whole hams and sliced them in Britain, on the ground that the slicing and packaging of prosciutto di parma was central to the ham’s valuable reputation and therefore can only occur within the limited region designated by the GI.
A.1.1 Significance of Geographical Indications

Geographical indications are designed to reward the goodwill and reputation created or built up by a producer or a group of producers over many years or even centuries. They reward producers that maintain a traditional high standard of quality, while at the same time allowing flexibility for innovation and improvement in context of that tradition. Given the recent trends in the world market, where consumers, especially those in the developed world, are increasingly becoming finicky about the quality and authenticity of the products that they are buying and are gradually developing preferences for environmentally sound and/or socially responsible products, GIs are increasingly gaining importance as weapons for such niche marketing.

The fundamental nature of a geographical indication is that the geographical place name indicates quality, taste or other attributes to the consumer. Consumers now a days are looking for quality products i.e., authentic products with a solid tradition behind them and they are influenced by their social conscience when choosing those products. GIs have the potential to increase the price of tradition-based, reputable products. As such, GIs draw from both natural and human resources located within the territory, thereby stimulating the rural economy. European Commission officials, such as the Commissioner responsible for Agriculture, Rural Development and Fisheries, also cited rural development as one of the contributions of GIs. Several studies have shown that GIs have an important role to play in the regeneration of the countryside since they ensure that agri-foodstuffs are produced in such a way that conserves local plant varieties, rewards local people, supports rural diversity and social cohesion, and promotes new job opportunities in production, processing and other related services.

GI protection is one arrow in the quiver of governments, particularly in European states, that seek to protect their agricultural sector from low-cost competition from abroad. Falling at the confluence of agriculture, trade and intellectual property, GIs have become ‘a red-hot issue’ in International Law. EC Regulation 510/2006 states:

The promotion of products having certain characteristics could be of considerable benefit to the rural economy, in particular to less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas.
Thus the potential of GIs for rural development has been fully recognized by the EU, which links GIs directly to certification of quality and indirectly to rural development and increasing farmer incomes.

Thus, it can be concluded that leaving aside the economic and commercial benefits, GIs also serve to convey the cultural identity of a nation, region or locality, and add a human dimension to goods, which are increasingly subject to standardized production for mass consumption. Often GIs are also associated with other social benefits, such as, the protection of community rights and traditional knowledge.

A.1.3 Juridical Nature of Geographical Indications

Geographical indications are in their juridical nature very special. They are distinctive signs, they are industrial property rights, but they are not property of one single person, association or public institution. Geographical indications do not constitute a type of co-ownership, but it is a communal property. This means the geographical indication belong to several persons, who are the owners of the designation. The use and benefit of the designation belongs to the whole collectively, i.e., to all the producers and traders of the demarcated region whose products comply with the established rules. For this reason GIs are non-transferable.

A.1.4 Justification for Protection of Geographical Indications

Intellectual Property is protected by a number of tools, most notably trademarks and patents. Patents and trademarks prevent competitors from “free riding” on others’ intellectual property investment and protect consumers from deception. The justification for protecting GIs is similar. GI protection in International Law is justifiable to protect consumers against confusion and to lower their search costs. The legal protection of this IPR evidently plays a significant role in commercial relations both at the national as well as at the international level. Without such protection GIs run the risk of being wrongfully used by unscrupulous businessmen and companies. Such unfair business practices not only result in huge loss of revenue for the genuine right-holders of the GIs concerned but can also hamper the goodwill and reputation associated with those indications over the longer run. All well-known geographical indications such as Kani Shawl, Kashmir Sozani Craft, Tirupathi Laddu, Darjeeling Tea, Champagne, Scotch Whisky, Havana cigars, Antigua coffee, Bikaneri Bhujia are
what they are today because of sustained efforts by individuals, communities and organisations to keep their authenticity, mystique and genuineness in existence and promote and preserve the quality of these products.

In addition, local products protected by GIs are viewed by their supporters as potentially important tools in rural development projects and programmes. In such efforts, the mobilisation of local resources of all types is critical. Local products, embodying the traditional knowledge of local residents and likely to find a specific market among consumers who have migrated to other places, seem attractive in this respect. In this context, GIs may become useful instruments in fighting rural poverty. One can thus understand why many people in developing countries are attracted by them. GIs have become a possible mechanism to promote, develop and activate actions between indigenous people coordinating their activities with national, regional or international organisations.

Geographical Indication is a peculiar kind of intellectual property, protection of which has been subject to many hindrances throughout the world, especially in the developing countries. Despite wide efforts the conceptual underpinnings of GIs have not been rigorously examined. Geographical Indications prevent misuse of designation or presentation of a product, which indicates that the product originates in a place different from where it actually originates. For example using “Darjeeling” for tea, which was not grown in the tea gardens of Darjeeling, is detrimental to consumers. If the products offer competition in international markets, it is for their quality, rather than quantity. Quality is determined by the geographical, natural and human factors. It, therefore, becomes imperative that adequate protection be granted to the geographical indication.

A.1.5 Geographical Indication as an Instrument of Protection for Traditional Knowledge

Traditional knowledge, innovations and practices play an important role in practically all aspects of the lives and livelihoods of rural people in India: food and agriculture, human and animal health, clothing, shelter, architecture, art, culture, handicrafts, natural resource management, etc. Traditional knowledge is an inextricable part of the bio-cultural heritage of indigenous peoples and local communities. It is ‘traditional’ only to the extent that its creation and use are rooted in the cultural norms and
practices of a community; it does not necessarily mean ancient or static. Indeed, that which is ‘traditional’ can be seen as dynamic and evolving. TK encompasses the process of extracting relevant genetic resources from nature. The endeavour of identifying genetic resources is complemented by skill and practices of preserving such knowledge for future generations. Traditional knowledge is generally held collectively. Traditional knowledge as a concept of cultural ecology, for matters of equity and sustainability, increasingly calls for legal protection as an emerging concept in international law. It expresses the exploitation by individuals or communities of genetic material, which the holders have discovered and identified as resourceful for the livelihood of contemporary and future generations.

The use of traditional knowledge (TK) related to biological resources is not restricted to the lives and livelihoods of agrarian, rural and indigenous societies. In the modern day, there is an ever-growing demand for natural, herbal and organic products globally, especially in urban markets. The herbal medicine, cosmetics and personal care industries are the major users of these resources. The increased market demand for biological resources and associated TK could offer new opportunities for generating benefits and enhanced incomes for indigenous and local people. However, the current reality seems to be quite far from achieving this. There are very few experiences globally of local communities or traditional knowledge holders gaining substantially from the commercial use of their knowledge. On the contrary, cases of biopiracy and misappropriation of traditional knowledge are becoming more apparent and have been on the rise in the last two decades. This is also because more biopiracy cases have been highlighted since the Convention on Biological Diversity (CBD) was signed, and since national legislation has been introduced in member countries.

One of the primary reasons for this misappropriation is that traditional knowledge is available freely from local communities and these knowledge holders are not aware of the need to protect their intellectual property rights. The fact that this knowledge is often spread across several families and communities covering a large geographical area and sometimes even across country borders, makes protection even more challenging and misappropriation easier and more likely to occur. Misappropriation is exacerbated by the lack of effective tools for protecting the intellectual property of the holders of traditional knowledge and ensuring that they receive benefits from the
commercial use of their knowledge. This is discussed further in the chapter on legal tools for protecting TK in India.

Traditional medicine is popular throughout the world. In some Asian and African countries, 80 percent of the population depends on traditional medicine, including for primary healthcare. In many developed countries, 70 to 80 percent of the populations have used some forms of alternative or complementary medicine such as acupuncture. Many modern drugs and vaccines are based on natural resources and associated traditional knowledge. Traditional medical knowledge has social, cultural and scientific value and is important for many indigenous peoples and local communities. Growing commercial and scientific interest in traditional medicine systems has led to calls for traditional medical knowledge to be better recognized, respected, preserved and protected.

The importance of traditional medicine as a source of primary health care was first officially recognized by the World Health Organization (WHO) in the Primary Health Care Declaration of Alma Ata (1978) and has been globally addressed since 1976 by the Traditional Medicine Program of the WHO. The Member States of WHO have defined “traditional medicine” as having a long history and comprising traditional medicine as “the sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention, diagnosis, improvement or treatment of physical and mental illnesses”.

“Traditional” means that the knowledge is created in a manner that reflects community traditions; it is often intergenerational and created and held collectively. “Traditional”, therefore, does not mean “old” but is rather related to the way in which the knowledge is created, preserved and transmitted. Traditional knowledge is generally considered the collective heritage of a particular indigenous people or local community.

Different aspects of traditional medical knowledge are under discussion in several international forums, including WHO and the World Trade Organization (WTO). The World Intellectual Property Organization (WIPO) is primarily concerned with “protection” of traditional medical knowledge in the IP sense – protection against unauthorized use by third parties. Negotiations currently underway in the WIPO
Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) seek to develop an international legal instrument that would provide effective protection of traditional cultural expressions/folklore and traditional knowledge (including traditional medical knowledge), and address the IP aspects of access to and benefit-sharing of genetic resources. Calls for the protection of traditional medical knowledge are often based on a number of cases involving misappropriation by unauthorized third parties, who have patented compounds derived from traditional medicines without the prior consent of traditional medical knowledge holders and without fair compensation.

Examples of patents based on traditional Indian medicine have included the use of turmeric for healing wounds, the anti-fungal properties of neem, and a diabetes medicine made from extract of jamun. All three patents were subsequently revoked. In the case of captopril, a drug used to treat hypertension and heart failure, no benefits have flowed back to the indigenous Brazilian tribe that first used pit viper venom as an arrowhead poison. By contrast, the San people of the Kalahari Desert have a benefit-sharing agreement with South Africa’s Council for Scientific and Industrial Research, which is working with pharmaceutical companies to develop dietary supplements based on hoodia, a succulent plant well-known to the San for its appetite-suppressant qualities.

IP protection to medicinal plants can take two forms of protection viz., positive protection grants IP rights over the subject matter of traditional medical knowledge. This may help communities to prevent others from gaining illegitimate access to traditional medical knowledge or using it for commercial gain without equitably sharing the benefits. It may also enable active exploitation of traditional medical knowledge by the originating community itself, for example, to build up its own enterprises based on that knowledge whereas defensive protection does not grant IP rights over traditional medical knowledge but aims to stop such rights from being acquired by third parties. Defensive strategies include the use of documented traditional medical knowledge to preclude, oppose or invalidate patents on claimed inventions that are directly based on such knowledge. Defensive measures undertaken by WIPO include changes to the Patent Cooperation Treaty’s Minimum Documentation and the International Patent Classification so as to improve searches for “prior art” and prevent patents from being granted in error. In 2003, it was agreed
that certain traditional knowledge documentation, such as the Indian Journal of Traditional Knowledge and the Korean Journal of Traditional Knowledge, should be included in the Patent Cooperation Treaty’s Minimum Documentation. In 2006, the International Patent Classification was amended to include a traditional knowledge category, which covers traditional herbal medicines.

Although the Convention on Biological Diversity (1992) and Nagoya Protocol (2010) require commercial users of genetic resources and traditional knowledge to share the benefits they derive fairly and equitably, these agreements only cover resources collected after the entry into force of the CBD and the Nagoya Protocol, and do not recognise rights over traditional knowledge that is already published or ‘in the public domain’. So rather than waiting for possible ‘benefit-sharing’ by others, communities stand to gain a lot more by selling bio cultural products themselves, for full ‘benefit capture’.

A.1.6 Protection of Medicinal Plant of Kashmir under IP Regime

The traditional medical systems of northern India such as Ayurveda and Tibetan are part of a time-tested culture and honoured by people still today. These traditions have successfully set an example of natural resource use in curing many complex diseases for more than 3,000 years. Many advantages of such eco-friendly traditions exist. The plants used for various therapies are readily available, are easy to transport, and have a relatively long shelf life. The most important advantage of herbal medicine is the minimal side effects, and relatively low cost compared to the synthetic medicines. The success of medicinal plants sector mainly depends on the awareness and interest of the farmers as well as its other stakeholders, supportive government policies, availability of assured markets, profitable price levels, and assess to simple and appropriate agro-techniques. The successful establishments of medicinal plants sector may help in raising rural employment, boost commerce around the world, and contribute to the health of millions.

Conservation and management of traditional medicinal plants is an essential concern worldwide, especially in developing countries. The ever-escalating demand for the medicinal plants in pharmaceutical industries and in traditional system has resulted in overexploitation leading to the reduction of their natural populations. Besides, habitat loss due to anthropogenic activities has further intensified the concern. If
overexploitation of these plants continues, many species may decrease in, and ultimately disappear from their natural habitats. Although, studies has been carried out to understand the diversity and distribution pattern of the medicinal plants in Himalayan states of India, information on this aspect is not available in Jammu and Kashmir except for few fragmentary information like CAMP (Conservation Assessment and management Prioritization) workshop. Therefore, it is compulsory to study the diversity, distribution and utilization pattern of the medicinal plants, document folklore uses, identify nativity and endemism and suggest suitable conservation and management strategies. A concerted work plan, involving various stakeholders i.e., scientists, government organizations, NGOs and farmers, is required to implement the rule of section 8 of Biodiversity Act 2002, i.e., conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and knowledge to meet out the market demands and conservation of threatened and economically important plant biodiversity of the J&K State. Plants should only be collected in such a manner that ensures their continued presence, both in specific collection locations and across the landscape. The most serious threats to medicinal plants of Kashmir are habitat loss and fragmentation, climate change, illegal extractions, smuggling and invasive species. Special care has to be given when attributing a legal protection status to a species. Keeping in view the depletion of the medicinal resources, various government and non-government organizations are involved in conservation of these species in Himalayan region in general and particular.

The In-situ conservation of biological resources has been attempted all over India both by the central and state governments. Besides this one Biosphere reserve has also been proposed recently. These areas cover different altitudinal zones ranging from tropical to alpine and are helping largely in the in-situ conservation of threatened and economically important medicinal plants of the state. However, fragmentary information is available on the diversity, geographical distribution, utilization pattern, and folklore information of threatened medicinal plants in the state. Thus, there is a pressing need to identify the areas (protected and unprotected) and report rich areas as Economically Important Plant Conservation Zones (EIPAZs) at different altitudes with the involvement of the native populations and the various other organizations (State, Central and NGOs). There is also an urgent need for the development of
conservation repositories like herbal gardens, nurseries and encouraging farmers to cultivate threatened medicinal plants of the state. Although there are many Governmental and non-Governmental organizations putting their efforts for the conservation of these important plants, there are many other commercially important plants whose conservation technologies are yet to be standardized. Development of Conservation technologies for these plants will not only help in stimulating mass cultivation in fields but also, aid in reducing pressure on wild stock. Medicinal plants represent and contribute significantly to human health. Use of medicinal plants by Kashmiri People from has a long history and here we reported on 81 medicinal plant species used in the traditional health care systems of Kashmir.

A.2 Objectives of the Study

The statutory protection to GIs in India is still relatively new; it is likely that various unaddressed issues will be discovered that may require the Indian law to be enhanced. Within the general framework specified above, this research seeks to achieve the following objectives:

(i) To examine the present position in India for the protection of GIs.

(ii) To critically analyze the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999

(iii) To analyze the extent to which the consolidated protection regime protects GIs both nationally and internationally and to propose new measures in this field.

(iv) To examine whether the lack of awareness, capacity or resources may preclude legitimate producers of the GI product from its registration.

(v) To examine whether the legitimate owners of the GIs are pro-active enough to ensure a legal safeguard for their respective GI.

(vi) To analyse the concept of medicinal plants in Kashmir and relating it with the geographical indications.

This research work also gives a comprehensive overview of a range of issues in the context of Geographical Indications (GI) protection, with a particular focus on India.
It tracks the negotiating history of Trade-Related Aspects of Intellectual Property Rights (TRIPS) in search of the origin of GI-related provisions, and provides a cogent account of various contours of the World Trade Organization (WTO) negotiations on GI to date. It also analyses the Indian GI Act in light of the TRIPS provisions, portrays the current status of GI registration in India, and offers important policy suggestions for India in general and its applicability to the medicinal plants of J&K in particular.

A.3 Research Hypothesis

Considering the significance of IPR regime and its impact on Geographical Indications in the current scenario, the hypothesis adopted for the present study is that ‘the working of the current geographical indication legislation is not adequate in granting comprehensive protection to geographical indications in India particularly in J&K state relating to medicinal plants etc.’ India should follow a growing trend of utilizing its Geographical Indications to protect its culture, art and traditional knowledge, rather than viewing Geographical Indication registration as a monopolistic barrier to trade and economic development. By utilizing its rich traditions and IP rights to the fullest extent, artisans in India can compete with marketing and trade heavyweights from more developed countries, and thereby shift the historic imbalance of IP protections in its favor. The Geographical Indications have strengthened the economic structures of the J&K State and India, under Articles 22, 23 of the TRIPS Agreement.

The basic presumptions on which the present research work is undertaken is that the present GI Act does not confer specific protection to Medicinal Plants and include them only by implication. The Geographical Indications is necessary for protecting the traditional knowledge of the indigenous people of Indian which is Agriculture based economy.

A.4 Research Methodology

The present study is predominantly doctrinal but also includes interaction with various stakeholders including GI registry officials relating to the awareness about, importance and economic value of GIs. In following doctrinaire method, the author had to rely mainly on primary sources and thus analyzed and surveyed various
statutes, official documents, drafts, case laws, treaties, legal journals and periodicals, newspaper reports, newsletters and textbooks etc. To better understand the complex permutations of GIs and to test the hypothesis the author researched and reviewed most of the serious research on the topic, in order to distil the lessons from these studies and to assess the current state of knowledge about GIs. The researcher extensively looked at trademark literature to see whether author has independently reached similar conclusions in respect to GIs on identical issues.

The qualitative approach also forms a significant component of the thesis. The empirical study will be in the form of a semi-structured interview and meetings that will be conducted at various agencies, bodies and research institutes in India which are involved in agricultural industry particularly medicinal plant sector. At this juncture, it is worth noting that “semi-structured interview” refers to a flexible method of interview, in which it allows new questions to be brought up during the interview as a result of what the interviewee says. This is opposed to a structured interview which is more formalized and has limited set of questions. As far as the research is concerned, the interviewees which have been selected, in fact, representing a large component of the agricultural industry, and would be directly affected by whatever laws which are enacted and implemented in India.

The field study is not confined only to interviews with leading experts in the field of GIs and some stakeholders to get first-hand information and expert views on critical areas of GIs. The researcher visited at the botanical division of the Indian Institute of Integrative Medicine (CSIR) Srinagar, State Medicinal Plants board Srinagar, Sheri Kashmir University of Agricultural Sciences and Technology, Regional Research Lab, State Forest Research Institute Srinagar, unani hospitals in Kashmir and at the Field Station Pulwama where plant specimens collected were examined and identified from the available literature. Interviews with the stakeholders helped in identifying their concerns and needs in relation to their GIs.

A.5 Review of Literature

A broad review of literature related to the subject area of research is undertaken to identify doctrines and discourses.
Amikar Parwar, ‘Importance of Geographical Indication in the Growing IPR World’, tries to make an overview of the various national and international instruments to protect Geographical Indications from being used by unauthorized fellows. Every society develops a certain knowledge base over a long period of time. Development of such knowledge base owes its origin to the geographical environment and human interactions and becomes an important part of their economy and tradition. In a globalized society these are vulnerable to misuse, hence the process of preserving the knowledge and heritage is important. Geographical Indications have been given the status of intellectual property since the product gets more value commercially by its mere association with a particular place. GIs helps in the identification of a source of a good which in turn is related with the quality of good. The laws related with ‘GIs’ are applicable to wide variety of goods varying from natural, agricultural to manufactured products. If any name is related with the specific geographical area and that any particular area has an indicative power, the legal protection under GIs Acts can be claimed viz., Kolhapuri Sleepers, Real California Cheese, Florida oranges, etc. At the international level several mechanisms have been designed so that the labour invested by the true person may not be exploited by the unauthorized fellows or institutions.

Cerkia Bramley, ‘A Review of the Socio-Economic Impact of Geographical Indications: Considerations for the Developing World’, point out that the introduction of geographical indications (GIs) into the WTO TRIPS agreement has resulted in unprecedented recognition of the intellectual property (IP) right internationally. Its protection has however been controversial in many respects and the means and scope of protection strongly contested. Within the broader debate on whether TRIPS has the ability to bring about balanced and equitable economic benefits, a large body of literature has developed on the justification for and rationale behind GIs. While the EU has come out strongly in WTO fora on the point that GI protection can bring about benefits worldwide, particularly in developing countries, consensus has yet to be reached on the actual impact of GIs and the extent to which the potential benefits can be harnessed in a developing country context. In this context, the paper provides a review of the potential socio-economic benefits as discussed in the international literature. The paper then proceeds in the second part with some guidelines in interpreting the theoretical dimension in section. It explores
in this respect difficulties in empirically measuring the impact of GIs. It also highlights some challenges that GIs in developing countries are likely to face and which could impede their ability to harness the proposed benefits. It is expected that the discussion will contribute to the understanding of the potential but also the challenges of GIs in the developing world.

Dev Saif Gangjee, ‘Quibbling Siblings: Conflicts between Trademarks and Geographical Indications’, viewed that the relationship between Trademarks and Geographical Indications (GIs) has historically been tempestuous. Each of these quibbling siblings, members of the broader family of Unfair Competition law, entitles registrants to the exclusive use of a sign. So what happens when a GI collective and a trademark proprietor lay claim to the same sign within a single jurisdiction? As part of the renewed interest in TRIPs flexibilities and attempts at accommodating or reconciling differences between national laws, this paper explores a newly emerging space that may just be big enough for the both of them. The analysis draws on a recent World Trade Organization (WTO) Panel Report, which identifies the legal foundations for cohabitation. The Report coincides with doctrinal developments at the national and regional level which initially identified this zone of compromise: the geographical 'descriptive use' defence in trademark law. Coexistence is significant as it alters the dynamic of a venerable conflict between trademark and GI regimes, which has been locked in the language of trumps for several decades. Accordingly, the author in this paper introduces the players and describes the game of one-upmanship prior to this development in Part I; outlines the WTO decision in Part II and then draws parallels with doctrinal developments in the EU and US which presaged the possibility of coexistence in Part III. It concludes with an endorsement of coexistence as an equitable solution.

Farooq Ahmad Mir and Farutal Ain, ‘Legal Protection of Geographical Indications in Jammu and Kashmir: A Case Study of Kashmiri Handicrafts’, are of the view that the location of the State of Jammu and Kashmir represents a confluence where East, West, Central and South Asia meet which has provided an opportunity for the convergence of Hellenistic, Sinic, Iranian and Indian thought and culture. The
geographical location of the valley of Kashmir has made it an ideal location for handicrafts because local people prefer to stay indoors due to long winters.

The authors in this paper discusses different geographical indications which could be considered for registration in the light of statistical figures of revenue generated by such handicrafts. They also discuss lack of adequate governmental support to mobilize local human resource to take up handicrafts on professional lines for self employment which could ease the burden on the government resources to provide jobs to educated youth which is a perennial problem for the State of Jammu and Kashmir due to the lack of investment by the corporate sector and income generating units in the State. The paper points out some loopholes in the GI Act which could impede registration of geographical indications or could unjustly help traders of geographical indications to exploit ignorance of its true owners. It has been also argued that the traditional knowledge relating to handicrafts which is left unprotected should be protected by some *sui generis* system to suit the needs of the local craftsmen.

Irene Calboli, ‘Expanding the Protection of Geographical Indications of Origin under TRIPS: Old Debate or New Opportunity’, come out with the findings that Geographical indications of origin (GIs), their definition, and rationale for protection have historically been the subjects of heated debates in the international community. Fierce defenders of GIs protection, European countries have traditionally advocated that GIs should not be used by unrelated parties because GIs identify the unique qualities, characteristics, and reputation of the products to which they are affixed. To this claim, the United States and other new world countries have generally responded by pointing out that many GIs are generic terms on their soil, and, thus, consumers could not be confused as to the origin of the products identified by these terms. The adoption of the Agreement on Trade Related Aspects on Intellectual Property Rights in 1994 marked an important victory for the European approach by establishing general minimum standards for GI protection for all of its signatories. Distinguishing it from any previous international agreement, TRIPS required all signatories to establish minimal protections for GIs through their national laws and to provide extra protection for GIs that identify wines and spirits. Member countries also had to agree to TRIPS’ “build-in agenda” to take part in future negotiations that would expand this enhanced protection. The author analyzes the issue of GI protection pre- and post-
TRIPs and considers whether extension of the protection set forth by TRIPs is desirable for the international community. The recent developments on the debate on GI are explored, particularly for wine and spirits, with an eye to whether the advantages of extending the current protection could outweigh the disadvantages of such an extension. The paper revealed that enhanced GI protection in all areas could be more beneficial than detrimental for economic and agricultural development in most TRIPs countries; the author in this paper suggests that there should be a reasonable expansion of the current GI protection among member countries of TRIPs.

Justin Hughes, ‘Champagne, Feta, and Bourbon - the Spirited Debate about Geographical Indications’, described the present state of international protection of geographical indications such as Bourbon, Roquefort, and Bordeaux. Legal protection for GIs mandated in the TRIPS Agreement is implemented through appellations law in France and through certification mark systems in the United States and Canada. The paper then turns to the continuing debate between the European Union and other industrialized economies over this unusual form of intellectual property. The EU claims that increased GI protection would help developing countries, but, in fact, the increased protection proposed would principally secure larger monopoly rents to European farmers. Among other things, the EU wants the return of 41 words - like parmesan, mozzarella, champagne, and chablis.

Kal Raustiala and Stephen R. Munzer, ‘The Global Struggle over Geographic Indications’, are of the opinion that geographic indications stand at the intersection of three hotly debated issues in international law: international trade, intellectual property and agricultural policy. Akin to a trademark, a GI identifies a good as originating in a particular region, where a given quality of the good is attributable to its place of origin, well-known GIs include champagne and prosciutto di Parma. Although GIs have a long history, in recent years they have become central to the debate over the expansion of intellectual property rights in the World Trade Organization. The authors argue that GIs have gained greater political salience and economic value due to major changes in the global economy. Proponents of GIs also raise more diffuse concerns about authenticity, heritage and locality in a rapidly globalizing world. After explaining the origins of the effort to protect GIs in international law, we assess the normative justification for these unusual intellectual property rights. Some GI protection in international law is justifiable. But the existing
level of protection afforded by the World Trade Organization as well as current demands of the European Union for even greater protection is unjustified. The authors defend this position through careful consideration of the major theoretical bases for property rights.

**Latha R Nair & Rajendra Kumar**, ‘Geographical Indications: A search for identity’ sketches a practitioner’s perspective of geographical indications, their protection and the current international discussions on the subject. The authors have made every serious effort to include not only general information on the law relating to geographical indications but also all the relevant issues in discussion currently at the international level. The book contains a narrative of the history of the law on geographical indications traced through international conventions and case law, an analysis of the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) relating to the protection of geographical indications, a discussion on the recent and ongoing debate on the extension of Article 23 type protection to all goods and an attempt to explore the scope of geographical indications in the socio-economic development of developing and least developed countries. It concludes with a discussion on the unfinished agenda in the area and suggests a viable alternative to the international protection of geographical indications.

**Marion Panizzon & Thomas Cottier**, ‘Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions’, point out the fact that the Doha Development Agenda introduced the idea of protecting Traditional Knowledge into multilateral trade negotiations. In parallel, it discusses enhanced protection of Geographical Indications for agricultural products, beyond the current levels of protection based upon unfair competition. Both TK and GIs bear the potential to enhance diversification of products based upon sustainable agriculture. Both concepts are specifically addressed in the Doha Ministerial Declaration of 14 November 2001 in paragraphs 18 and 19, respectively, relating to the TRIPs Agreement. The DMD provides that WTO members extend protection of GIs to wines and spirits and address the inclusion of other products. It mandates the TRIPs Council to address Traditional Knowledge in reviewing the agreement under Article 71.1 of the TRIPs Agreement. Under the DDA, any reform must take into account the development dimension. The authors in this paper describe i) the legal, economic, ecological and societal precepts shaping TK and GIs, ii) the legal framework for TK
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and GIs in the context of international trade regulation, iii) the work undertaken in international organizations, iv) positive norms of the WTO Agreements treating of TK and GIs and v) the diverging negotiating positions of WTO members towards complementing the system of legal protection for TK and GIs. It provides a survey of the state of play in different fora and the difficulties to bring about coherence in this new and complex field located at the intersections of agriculture, intellectual property and development.

Pradyot R. Jena and Ulrike Grote, ‘Changing Institutions to Protect Regional Heritage: A Case for Geographical Indications in the Indian Agrifood Sector’, are of view that new institutions like Geographical Indications (GIs) evolved in recent years to protect indigenous knowledge in the agrifood sector without hampering ethos of free trade. Proponents regard these as strong tools for protecting their national property rights offering them new export opportunities in the agri-food sector. Opponents, however, consider GIs as barriers to trade. The paper seeks to establish some clarity in the controversy by providing theoretical justifications for GIs. It draws on insights from the New Institutional Economics and then substantiates these by citing experiences from India. Darjeeling tea and Basmati rice are taken as examples to highlight some dynamic institutional aspects of GIs. The forces shaping the new legal framework for GIs mainly arise from the international level.

Suresh C Srivastava, ‘Geographical Indications and Legal Framework in India’ seeks to examine the issues relating to TRIPS Agreement and the law and practice relating to protection of GIs in India. The TRIPS Agreement prescribes minimum standard of protection for geographical indications (GIs) and additional protection for wines and spirits. Article 23 of the TRIPS Agreement, which grants higher status only to wines and spirits and excludes other goods and products out of its purview, has generated considerable resentment. This discrimination or imbalance in protection has led to demands for additional protection to other goods and products from a number of countries including India. The Indian judiciary has played a significant role, particularly in the absence of any enforced legislation, in protecting GIs. They have entertained petitions in cases of infringement of GIs that misleads the consumer as to the place of origin or constitutes unfair competition. India has also taken legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 along with the Geographical Indications of Goods (Registration
and Protection) Rules, 2002 which on implementation would go a long way to protect GIs and provide a model for other countries to follow.

**Tomer Broude**, ‘Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law’, critiqued and viewed that the regulation of the relationship between international trade law and cultural protection is one of the challenges that the World Trade Organization (WTO) will be facing with greater intensity in the second decade of its existence. This paper approaches the problem as it is reflected in the current debate on Geographical Indications (GIs) for food and wine products in the WTO. It seeks to take 'trade and culture' seriously, looking not only at law's effects on trade but also on culture, and to examine the extent to which legal restrictions on international trade can in fact prevent the degradation of cultural diversity in a particular regulatory context.

The paper presents a positive theory of the law and economics of cultural protection through GIs and a discussion of the specific ways in which GIs, as sui generis international legal measures, are assumed to protect local traditions and cultural diversity (in addition to their economic and consumer protection roles). It then provides a detailed factual analysis based primarily on the experience of GI laws in the European Union, demonstrating that contrary to these theoretical beliefs, GIs have in fact proven incapable of providing cultural protection. On the basis of this case-study the author then analyses three nascent or potential international legal mechanisms for the safeguarding of cultural diversity with implications for future WTO law: (i) new sui generis legal constructs in the WTO (e.g., traditional knowledge rights); (ii) the interpretative or legislative expansion of Articles XX(a) GATT and XIV(a) GATS to include a general cultural exception from WTO trade liberalization disciplines; and (iii) the adoption of the 2004 UNESCO Draft Convention on Cultural Diversity establishing a parallel international legal regime on cultural protection with potential conflicts with WTO law.

**A.6 Scheme of Study**

The thesis tries to clearly articulate the underlying reasons, justifications, principles and policies behind the protection of GIs in India and then scrutinize the scope and shape of the GI protection system. In other words, the aim is to take a critical look at
the current system of GI protection in India. The present thesis is divided into nine chapters:-

The First Chapter which was introductory in nature effectively highlighted the need for the study to be undertaken. The chapter briefly outlined the importance and relevance of GIs in the context of international trade and globalization. It set out the essential elements of the study that was proposed to be undertaken touching upon aspects of previous studies. The research questions and hypotheses which formed the basis of the study were detailed in this chapter.

The Second Chapter looked at GIs in detail. It was crucial to understand the concept of GIs to establish its role in the IP family. The chapter highlighted the essential characteristics of what can be termed as a GI. The understanding of what constitutes a GI product was critical given that it is not only an agricultural commodity that can be seen as a GI but the scope is vast and can range from food items to handicrafts and even medicines. The basic definition of GIs as mentioned in the TRIPS agreement is ‘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’ Having understood the genesis of GIs and its characteristics the second chapter also considered the role of GIs in the Intellectual Property family. IP law is traditionally territorial in nature GIs fit within that aspect most comfortably. A possible conflict given the territoriality principle vis-à-vis GIs is that two different countries can have the same name of a particular geographic location. This can create the possibility of confusion in the minds of consumers. The chapter then proceeded to look into GIs in the context of Industrial Property (1883), the, 1891 Madrid Agreement for the Repression of False or Deceptive Indications the Lisbon Agreement on Appellations of Origin (1958). These agreements were important to consider as they gave rise to what GIs in TRIPS represents today. An issue of the Doha Round of the WTO negotiations was also addressed in this chapter. The chapter studied the legal and economic aspects of GIs. It established the need and importance of GI protection. Protection of GIs has far reaching implications for both producers and consumers alike. While consumers can
be assured of a particular quality when they look at products from a specific geographical location, the producers can be assured that a premium on their products is established.

The chapter then considers GIs and Trademarks and highlights the similarities as also the fundamental differences between them. Both GIs and Trademarks serve as source indicators and that is a key similarity between them. Perhaps one of the most important differences is the nature of rights that GIs and Trademarks offer. While trademarks are individual rights and can be owned privately, GIs are seen as public or collective rights. This essentially means that GIs do not have the same elements as that of other forms of IP, such as transfer, assignment and sale. They are inherently linked to the geographic area and therefore cannot be moved from there,

The Third Chapter thereafter looked at the Indian perspective on GIs. In line with its TRIPS obligations India enacted The Geographical Indication of Goods (Registration and Protection) Act, 1999. The salient features of the Act were considered and outlined in detail. The Indian law defines indication as ‘any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies’. The fact that the GI Act in India provides for civil and criminal action in the event of infringement shows that India has kept GIs at par with trademarks and considered them as a valuable asset.

The Fourth Chapter considered the relationship between traditional knowledge (TK) and GIs. While GIs relate to the product, TK refers to the information and both then link to geographically confined people or a particular region or locality. There is then a close relationship between GIs and TK. This chapter also highlighted a product based on traditional knowledge that can be considered for a GI registration. Considering the close relationship between GIs and TK, efficient policies on identification of TK that could perhaps be protected as GIs becomes imperative.

The Fifth Chapter find out that the importance of the medicinal plants sector can be gauged from the fact that herbal medicines serve the healthcare needs of about 80 per cent of the world’s population. According to the World Health Organization (WHO), the goal of ‘Health for All’ cannot be achieved without herbal medicines. While the demand for herbal medicines is growing in developing countries, there are indications that consumers in developed countries are becoming disillusioned with modern
healthcare and are seeking alternatives. This has renewed interest by the multinational pharmaceutical industry in bio-Law, Environment and Development Journal prospecting. But the lack of national legislation or effective international agreements on conservation of biodiversity has resulted in ‘slaughter harvesting’ of medicinal plants and massive depletion of biodiversity. This trend does not augur well for sustainable use of medicinal plants resources.

The Sixth Chapter considers that the methodology for conservation of medicinal plants both In-situ and Ex-situ has to be adopted in combination, besides initiatives for scientific propagation of Medicinal Plants on required scale. Again, it is very essential that livelihood of forest dependent communities are kept in consideration as they are the major stake holders to share the benefits. It is also very essential to improve the capacity of front line staff to equip them to face the present day challenges in conservation of medicinal plant wealth.

The Seventh Chapter explored that with the immense increase in the use of traditional medicines worldwide, protection of traditional medicinal knowledge has become an important concern. With the increase in demand for medicinal plants, exploitation of resources by the multinationals and absence of an effective system of protection, the urgent need for regulating access and benefit sharing has arisen. India is a most important resource collection centre for plants and traditional knowledge of system of medicines like Ayurveda, Siddha and Unani. As regards IP protection of traditional knowledge, it’s true that a dilemma prevails about providing patents to products and medicinal formulations, which are developed over hundreds of years. The chapter thereafter looked Geographical Indication as an instrument of Intellectual Property rights can be the way to protect traditional medicinal knowledge. What we need is a sui generis law combined with certain intellectual property rights. Legislation can be enacted taking into account the various regional differences in the matter, customary laws of various communities etc. Besides, we should give more priority to collective or community rights instead of individual rights. That way it will become more profitable to the communities to commercialize their knowledge. The traditional medicinal knowledge which is not yet in the public domain can be
protected as trade secrets. But the most essential thing which is needed is compatibility between the legislations and customary laws.

The **Eighth Chapter** highlighted the role of Judiciary, particularly in the absence of any enforced legislation, to protect geographical indications. It has applied the common law principle of passingoff as suited in cases of geographical indications. Thus the courts have been giving effect to Articles 22 and 23 of the *TRIPS Agreement* even before it came into existence. It was the *Supreme Court* which compelled the government to take serious action regarding the biopiracy of basmati rice.

The chapter then considered Piracy is developing in the business society as an evil. Laws are there but the need is for a zealous and vigilant judiciary to handle such issues with not only diligence but also competence, promptness and firmness. Judiciary has to protect and uphold the interests of the people at large in all the spheres especially geographical indications thereby restoring their cultural and economic rights in order to benefit the society at large.

**Chapter Ninth** presents the conclusions based on the analyses of the legal regime operating in India governing GIs, indicating problems of development of GI law in India and takes a brief review on how claims for greater protection to medicinal plants can be viewed. The chapter further provides suggestions which include proposals for evolving strategies for motivating GI holder to take benefit of registration of GIs in India.

**A.7 Deficiencies and Weaknesses in the Existing Legal Framework on Geographical Indications**

As with most GI systems, the administration of the Indian GI system under the *Geographical Indications of Goods (Registration and Protection) Act, 1999* presents some weakness/challenges which are as follows:

(i) While the definition of GIs in the *GI Act* indicates that goods imply agricultural goods, natural goods or manufactured goods, *Section2(1) (f) * of the *GI Act* defines “goods” to mean any goods of handicraft or of industry and food stuff as well. Such discrepancy could have been avoided by the lawmakers of India.
(ii) Though many GIs are registered in India, there is no registration of authorized users in all cases. Definition of ‘producer’ under the Act includes persons who trade in or deal in production, exploitation, making or manufacturing of GI goods. This definition gives an upper hand to traders and middlemen, thus actual producers get marginalized. They may register GIs which may have potential for commercial exploitation and by limiting the geographical area and identifying producers in whom they have interest and who may not be real producers, misuse the law.

(iii) No rural producer is bothered to challenge infringement of GI nor is he interested in getting himself registered as an authorized user.

(iv) Sometimes, the majority of producers are not actively involved in the application and are unaware that a GI has been registered, leaving the local government the task of informing them of their rights and opportunities after the fact.

(v) Moreover, producers that are members of the group owning the registered GI do not automatically have the right to use the GI but they must be registered as an ‘Authorized User’, which entails a registration procedure, payment of applicable fees, and approval from the registered proprietor of the GI.

(vi) Lack of awareness, capacity or resources may preclude legitimate producers of the GI product from registering.

(vii) There are no provisions within the Act to ensure that the traits as required under the Act for the initial registration like quality, reputation and characteristics, are maintained post-registration.

(viii) *Section 9 (f)* prohibits the registration of GIs that are determined to be generic. This exception of genericide, which is broader than required, is a serious blow to the producers in a country like India where many traditional agricultural products derive their peculiar qualities and characteristics from the particular geographical region where they are grown.

(ix) The artisans like weavers, goldsmiths and other craftsmen may not be affluent or literate in English language, so the publication must be in the local language.
The main object of the Act is to protect those persons who are directly engaged in exploiting, creating or making or manufacturing the goods. They have the hands-on experience of the GI products. When these creators or makers complain that the application has been made behind their back, the registration should not be allowed to remain.

(x) The advertisement in Section 13 of the Act, in the Trade Journal is of no use and will not serve the same purpose as a public notice akin to the Section 4 of the Land Acquisition Act 1894 notice.

TRIPS Agreement leaves it exclusively in the discretion of the country of origin to decide whether a particular geographical name has become generic or not. India ought to have kept the scope of genericide as narrow as possible, i.e., it should have allowed its courts to determine which term is generic and which is not, based only on the situation in India (the country of origin) and not based on the status in the areas of consumption. As an overall assessment, there is a genuine and sincere desire on the part of delegations to move forward and resolve the remaining differences in the Act.

This study further reveals that following are the apparent deficiencies in the existing legal framework for protecting GIs effectively:

(i) Lack of Detailed and Flexible Regulations

(a) The regulations framed under the Act are ambiguous in terms of content and methodologies. The procedure prescribed under the Act for the completion of documentation, the description of product, and the evaluation of the content, etc., are not clear.

(b) Defining the exact geographical boundaries of a product is often a big challenge, particularly in the context of non-agricultural products. For example, Moradabad Metal Craft is made not just in the city but in the rural areas of the same district as well as in some neighbouring districts. Since the officials of the GI registry have taken a lead role in providing the process of registration, they try to include the entire state for registration of GI which may not be appropriate. That is why the application of GI Act provisions into real life overlaps and is hardly implemented.
(c) The roles of organizations and individuals are not clarified, especially the roles and functions of national organizations in applying for GI registration.

(d) Limitations are faced by the examiners for registering a product as a GI in the form of unavailability of relevant information for cross verification due to poor documentation and lack of understanding of the law and its interpretation on the part of applicant.

(ii) Protects the Name or Indication Only: An important dimension of GI is that it does not protect knowledge or technology as such. It only protects the name or indication. This essentially means that the famous Lucknow Zardozi can be produced anywhere in the world but it cannot be named ‘Lucknow Zardozi’.

(iii) Negligible Infringement Reported: The improvements in the law for the protection of GIs in India recently introduced have not been able to bring down the scale of infringements. No rural producer seems to be bothered to challenge infringement of GI nor is he interested in getting himself involved in the infringement action. The situation is due to the fact that access to the judicial system remains difficult in practice, because of burdensome and costly litigation and notarization requirements, the lack of an effective preliminary injunction system, and the inadequacy of the damages awarded. The lack of uniform methodology for enforcement also hinders these efforts. Moreover, the willingness of authorities to take effective action is at times affected by insufficient training of the staff involved. Authorities also tend to interpret laws and regulations in a narrow way which can create loopholes for infringers. The registration of a GI under the GI Act can make sense only if the infringement actions are taken against the violators of the GI laws. However, there seems to be not many takers for initiating infringement actions.

(iv) Post Registration no Quality Control: There are no provisions within the Act to ensure that the traits as required under the Act for the initial registration of a GI like quality, reputation and characteristics, are maintained post-registration once the status of a GI is granted to a product. Existing sui generis legal framework do not often provide for compulsory controls of the compliance of the products with the GI specifications.
(v) **Lack of Awareness:** Serious lack of awareness among the producers and stakeholders about what a GI is a challenge faced which could impair successful protection of a GI. Lack of awareness precludes legitimate producers of the GI product from registering their products. They are not familiar with the legal instruments available for the protection of their products. For most of them, the protection of their intellectual property rights appears to be a relatively new priority. The primary reason for this is the complete lack of awareness with respect to potential benefits arising from the registration of GIs and thus limited use of GI laws.

(vi)**Lack of Institutional Capacity:** The framework for protection of GIs should be strong and stable to ensure that the link between the product and its origin is shielded, and at the same time it should be flexible enough to allow innovations that do not threaten the territorial identity of the product. Large scale of counterfeit products is still on sale in markets, and authorities entrusted with the duties to enforce the provisions of the Act, hardly use such powers. Lack of local institutional capacity is a major challenge faced by the producers who wish to protect their products through GI registration. Government or groups who wish to pursue a product for GI designation should keep in mind that the distribution and the magnitude of costs and benefits from a GI will depend upon the nature of the institutions established for its protection.

(vii) **Only One Geographical Indication Registry:** As per the GI Act, in order to register a GI, an application is to be addressed to Registrar of Geographical Indications, Geographical Indication Registry, in Chennai. This in a way makes it difficult for people from other parts of the country to come up for the registration of GIs. This issue points out the need to open more centers in India for GI registration so that access to registration is facilitated and also popularized.

Due to these imperfections, a robust legal rights regime of GIs has not been developed. In fact, these limitations are inevitable because of internal deficiencies in the GI Act itself and also factors like the lack of participation on the part of the community and other civil organizations. India needs not only to protect GIs, but also adopt the policies necessary to develop its GI products globally.
Abstract

A.8 Depletion of Traditional Knowledge in Medicinal Plants in Kashmir

There was a time when people in Kashmir would resort to traditional way of treatment for common and dreadful disease and this culture was very prevalent in the Kashmir since immemorial. There have been competent herbal healers that were known as Hakeems. But now this culture seems to be fading from the sphere of Kashmir. Jammu and Kashmir is very rich in medicinal plants but there is a need to explore them for the benefit of the society.

The question arises as to why we need to preserve traditional knowledge of our state. The answer to this is that before the dawn of English medicinal culture, Kashmiri masses would resort to herbal medicinal products or herbs for the treatment of diseases like diahorria, jaundice, gout etc. Now the culture of this herbal healing system is fading. Secondly if an elderly citizen is having the knowledge of say 10 herbs and their usage. His son would have knowledge of 5 herbs. This way process will go on and the scale of herbal knowledge will decrease with the advancement of generations. The time will come when people would have no knowledge of these herbs. If a sophisticated machine is imported from America or any other foreign country it will cost too much to purchase. If the same is provided at low cost to the people it will make our state self-sufficient besides providing security and patent to the idea, innovation or herbal practice of an innovator. An initiative can be taken to launch a medicinal product in the market for which selection of practices will be taken from local herbal healers whereby the validity of those herbal practices will be evaluated by reputed chemists and scientists. The herbal practice provided by an innovator/herbal healer or a farmer etc is included in the National Register of Grassroots Innovations and Traditional knowledge. With the consent of innovator or herbal healer it can be shared with the third party. With the prior permission of the innovator it may be disseminated for the benefit of the society. Property Rights of the innovator/Herbal Healer is ensured before initiating such process like improvement and design etc. However, if the herbal practice or traditional knowledge innovation provided by an innovator is well known in public domain, then the restrictions on its diffusion or application will not apply. The grassroots innovations developed by farmers, slum dwellers should be unaided, unsupervised without any aid from any external agencies.
Traditional knowledge (TK) related to the use of natural resources including medicinal plants has been recognized as one of the important assets inherited through generations by the local communities. Such knowledge is generally passed down to the next generation verbally, in the form of odes and poems. In the process of rapid modernization and advancement of medical sciences, partially documented or undocumented knowledge on ethno medicine began to deplete drastically. Although several ethno botanists and anthropologists have made attempts at documenting such knowledge in various parts of the world, several remote localities and indigenous communities have remained unnoticed. Traditional knowledge has now regained importance due to the discovery of new drugs and formulations from phytoresources. As a result, there has been a spurt in herbal industries. The pharmaceutical sector has to meet the ever-growing, excessive demand and this in turn has led to wild harvest of these resources, which may lead to rapid depletion of resource base. Contrary to the growing demand of medicinal plants all over the globe, TK on ethno medicine is declining rapidly, especially in the developing countries. The Himalayan region, well known for diversity and richness in medicinal plants, also harbours a large number of ethnic communities, each with distinct culture and TK system. Rapid pace of development and socio-economic transformations have led to erosion of natural resources and TK in the western Himalayan region.

Nowadays, rural life is changing into fast life of modern cities. This change is affecting the young generation and overall increasing willingness to use allopathic medicines over ethno medicines for its faster effect. Though the respondents shared that the process of collection of medicinal plants is time consuming and tedious, it was observed that villagers were more interested in selling these medicinal plants instead of using them for self cure. But, this trade is more or less in the informal sector and so difficult to document. Changes in agricultural practice were evident from the fact that locals preferred cash crops like soybean, rajma, potato and tomato over medicinal plants. Local needs and micro-socio-economic–environmental conditions of knowledge holders and of medicinal plants should be considered to formulate policies to conserve both traditional knowledge and the plants.
A.9 Traditional Knowledge, Medicinal Plant and Intellectual Property

As the legal instruments available to invoke Intellectual Property Rights (IPR) are inadequate to protect the vast intellectual resources available in the country with the indigenous people, we need to be agile and alert in watching the IPR infringement by others and claiming the benefit sharing in proportion to the commercialization of our potentials as well as intellectual resources of Medicinal Plants. The IPR system and the misappropriation of potentials without prior knowledge and consent of the indigenous tribal community are bound to evoke feelings of anger, frustration, of being cheated and helplessness of knowing nothing about IPR and piracy. Even now, for indigenous tribal community, life is a common property that cannot be owned, commercialized and monopolized by an individual or a group and majority of Indians are unaware of IPR intricacies of how the system operates. We are now in the process of learning the new world order of IPR and have to tighten our nuts and bolts to develop efficient safeguarding strategies by developing capacity building of the people through networking with various groups who own the intellectual resources in their interest in particular and nation as a whole.

During the course of research, various problems were identified with and several legal obstacles have been observed and also the relevance of this industry was well understood and thus the researcher come up with certain recommendations and suggestions which are as follows:

(i) It is important to try to capture the salient features of the medicinal plants trade in India, particularly in J&K state and the related aspects of conservation and use in order to explore possibilities of private sector intervention, which can address the twin objective of sustainability of the resource as well as a better stake for the collectors/growers.

(ii) Transit permit (issued by the Forest Department) should be made mandatory for transportation of commercial quantities of the fruits so that it ensures a fair share for the primary collectors/growers. This will act as automatic regulation on when the fruit was harvested. The Forest Department personnel, should be already oriented about the importance of proper time/method of harvesting, accordingly they should refuse to issue transit permits before the right time.
(iii) The legal and administrative structure pertaining to medicinal plants can play an important role in sustainable management through proper check while granting licenses, etc.

(iv) The State level intervention should be more active and policies on Medicinal Plants should be important criteria in their policy framework.

(v) India should be developing viable policies that effectively promote bio-prospecting and sustainable development while protecting the rights and the cultures of local communities.

(vi) Establishment or designation of scientific authorities to conduct non-detrimental studies for listed species, and management authorities to issue permits and certificates is important.

(vii) Legal instruments should be implemented to address biological diversity conservation and the sustainable use of its components comprehensively.

A.10 Protecting Medicinal Plant as Geographical Indications

India was rattled out by the cases of bio-piracies and was facing a difficult situation to tackle. As a result of which various policy changes were made and more demand grew for stronger protection of cultural patrimony in India. Adoption of TRIPS by India also brought about a sea change in Indian IPR framework. Despite India succeeded in challenging the neem tree and basmati rice patents, some commentators thought that India’s victories were limited. These cases had two significant lessons for India. Firstly, it helped to draw the attention of whole nation about the importance of not only geographical indications but also traditional knowledge and also their vulnerability to the bio pirates. Secondly, it exposed a peephole in the Indian legal system, which had no mechanism to deal with the issues like this.

Countries like India worry that, short of an integrated approach, such case-by-case challenges would be too costly and ultimately ineffective to stop developed countries from continuing to commit biopiracy. But getting them revoked is equivalent to winning small battles at high cost with little impact on the war being waged over the entire system of ‘bio-colonization’. The real solution will come only out of an integrated strategic approach to protect the bio-assets of developing countries through
globally accepted formal and informal protection regimes. In reaction to the neem tree and basmati rice patents, India has strengthened its legal regime to conform to international laws on intellectual property, and its local communities have become more aware of and taken actions to protect their sovereign rights over traditional biological resources in general and medicinal plants in particular. Extending the Article 23 protection to all geographical indications could have prevented developed countries such as the United States from exploiting the traditions and resources belonging to developing countries like India. It would be an opportunity to achieve a better balance between the divergent interests in the area of intellectual property rights of developed and developing countries.

The reason for providing intellectual property rights to geographical indications has usually been broadly classified as follows:

(i) The custodians of geographically indicated products should receive some price benefits as marketing of such products leads to commercial gain;

(ii) The protection of GI products contributes to the wider objective of conserving the environment, biodiversity and sustainable agricultural practices;

(iii) Preservation of traditional practices and culture;

(iv) Avoiding “biopiracy”; and

(v) Promotion of its use and its importance to development.

Geographical Indications are not exclusively commercial or legal instruments, they are multi-functional. They exist in a broader context as an integral form of rural development that can powerfully advance commercial and economic interests while fostering local values such as environmental stewardship, culture and tradition. They can provide the structure to affirm and protect the unique intellectual or socio-cultural property embodied in indigenous knowledge or traditional and artisanal skills that are valued forms of expression for a particular community. GIs facilitate progress that is multifunctional in character and are not focused on a single product. An EC evaluation noted that GI development amplified:

(a) Regional cooperation between municipalities, authorities, commercial and social partners;
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(b) The positive identity of the regions, especially referring to culture, landscape conservation and marketing;

c) Improvements in the general infrastructure and rural services;

d) Profiling of the region as an attractive business location;

e) Improvements in environmental quality and linked utilization of resources.

India has taken various steps to strengthen the protection given to IP as is evident from the amendments in the legislative enactments to give effect to the International Conventions and Treaties to which India is a signatory. The recent changes in IPR laws reflect India’s compliance with the obligation under the TRIPS Agreement. For example, the Copyright Act, 1957 has been amended to include computer program as literary work as required by Article 10 of the TRIPS Agreement. The Trade and Merchandise Marks Act, 1958 has been replaced with the Trade Marks Act, 1999 which includes protection of well-known marks, certification marks and collective marks. It now provides for registration of trademark for services as well. This is in compliance with Article 16 of the TRIPS Agreement. Other recent legislations include the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Designs Act, 2000 and the Protection of Plant Varieties and Farmers’ Rights Act, 2001.

A.11 Suggestions and Recommendations for Protection of Medicinal Plants in Geographical Indications Law

In the light of above discussion it is humbly submitted if the following recommendations are considered and given effect to, there is likelihood of the state of law getting better objective oriented.

(i) Efficient Protection

(a) There is a need to approach the issue of protection of GIs holistically and evenly.

(b) Building of an appropriate capacity for implementing the GI legislation.

(c) Discussions of the researcher with officials indicated that there are limitations faced by the examiners in the form of non-availability of relevant
information/data for cross verification due to poor documentation and lack of understanding of the law and its interpretation. Therefore, there is a need to simplify the definitions and procedures provided under the Act, for building confidence and trust amongst the right holders in GI protection.

(ii) **Emphasis Should be Placed on Flexibility in Geographical Indication Registration Strategies**

(a) Need to wean the rights holders in the registration system to secure protection of their rights.

(b) Rules must facilitate registration without compromising on essential conditions for registration. To facilitate registration it is necessary that there must be flexibility in the rules without there being any compromise in observing the essential conditions lay down by law for registration of GIs. The authorities must not be too technical as to seep away the enthusiasm of the applicants to seek registration of their products and hence protection under the *GI Act*. This will give them confidence in the system and ultimately bring credibility and transparency to the system.

(c) Clear and transparent registration, modification and cancellation procedures providing legal guarantees to stakeholders.

(d) An extensive protection of registered GI names in all the States

(iii) **Policy for Awareness and Advocacy Programmes Must be put in Place**

A strong need for awareness building towards all types of stakeholders is required as there is a general lack of understanding of the importance of GI protection. Promotion campaigns of the *GI Act* should be implemented in order to promote it among all the relevant stakeholders. The main objective of the awareness is to prepare the producers and stakeholders particularly the manufacturing associations, exporter and trade associations, civil society organizations, institutions & centers’ of excellence and grass root level stakeholders associated with the production, marketing and overall development of the products on the emerging issues relating to Geographical indication, so that they can prepare themselves for protecting their products under the Act. Education and awareness among the public will also assist in effective
implementation of the GI policies and legislation. Moreover, post-registration, there is need for promotion and continuous awareness building particularly among the consumers.

(iv) **Role of Producers**

It is worth mentioning the value of geographical indications in terms of economy and culture. Due to the fact that genuine products with protected geographical indication are closely connected to their place of production and are influenced by specific local factors, they create value for local communities and properly inform the consumers about the origin of the product. They support rural development and promote new job opportunities in production, processing and other related services, and in the same time strengthen consumer loyalty. Producers in India who wish to avail themselves of the opportunities that owing rights to a GI can provide, need to agree on the quality standards and/or reputation attributes that will impart value to products identified with the GI and then they must collectively stick to them and support them. The researcher considers that there are good arguments to establish a system that would provide:

(a) A key role should be given to groups of producers when it comes to making the application for registration of a GI.

(b) Involvement of the State functionaries, NGOs and other groups working in the sphere of GI holders and producers at individual and collective level.

(v) **Supporting the Representation of Small-Scale Farmers via Collective Representation**

Though many GIs are registered in India, there is no registration of authorized users in all cases. Definition of ‘producer’ under the Act includes persons who trade in or deal in production, exploitation, making or manufacturing of GI goods. This definition gives an upper hand to traders and middlemen, thus actual producers get marginalized. They may register GIs which may have potential for commercial exploitation and by limiting the geographical area and identifying producers in whom they have interest and who may not be real producers, misuse the law. When the legal system enables representative groups to apply it is a means to encourage small scale and less favoured stakeholders to get involved in the process. The GI specifications are a strategic tool that can be adapted to each situation and which may include
provisions in favour of communities who could otherwise be at a disadvantage. The GI collective organisation will be also responsible for the follow-up and internal controls and GI safeguarding. GI regulation should give particular attention to indigenous languages in decrees, regulations and registries when the traditional knowledge of indigenous peoples is involved. There should be respect and recognition of horizontal governance over biological resources and knowledge in order to empower small farmers in projects that support vertical integration. GIs do not have negative impacts on biodiversity or traditional cultures, but positively support these wider territorial aspects which give rise to origin-based products. This could be achieved by encouraging producers to seek protection for a variety of products, rather than a single product, and by linking these tools to territorial development plans which provide the broader and longer term vision which shape their objectives.

(vi) Implementation of the Provisions of the Act

There is a need to strategize IP protection of GIs to create a better future and in order to achieve the same, it is important to have the broadest possible protection. Strategy for the protection of GIs can include:

(a) Conducting seminars and workshops to various stakeholders;

(b) Publishing the Policy in the Government Gazette;

(c) Employing advocacy of the Policy at national, regional and international levels.

There should be proper deterrent remedies including stringent fines. Public authorities may need to do more than provide legal remedies for deception. They may need to define quality standards and take steps to protect the reputation inherent in the GI from devaluation.

(vii) Infringement Action to be undertaken

The registration of a GI under the GI Act could make sense only if the infringement of the same is proceeded against. Geographical indications are a useful intellectual property right for developing countries because of their potential to add value and promote rural socio-economic development. However, as a consequence of such high commercial value of geographical names, they are exposed to misuse and counterfeiting. The abuse of geographical indications limits access to certain markets
and undermines consumer loyalty. In the absence of effective measures against misuse of geographical indications and other important geographical names, the risk of infringement of such intellectual property rights increased significantly. However, there seems to be not many takers for initiating infringement actions in India. The survey conducted showed that only few respondents were party to an infringement action. Many of the respondents answered that they knew about the infringement of their GIs, but were not initiating any action.

The main challenge is to obtain best commercial benefit by relying on the GI registration granted in India. This would include undertaking investigations to ascertain the infringement of the GI and undertaking appropriate infringement action. If producers are able to advertise their products that the GIs concerned are registered and any infringement of the right related to such GI may attract legal actions, then the chances of such infringement can be reduced.

(viii) Establishment of Enforcement Agents for the GI Policy and Supporting Legislation

Despite the positive developments for protection of GIs, significant progress on priority issues is still needed, especially insofar as GI enforcement in India is concerned. It still appears that the implementation of GI enforcement mechanisms needs further strengthening. Concerns are there with respect to the length and uncertainty of the outcome of court proceedings, as well as insufficient trained officials in the field of GIs. Strong engagement from the authorities to enforce GI and to improve the implementation of procedures will remain very important not only for right-holders but also for creating a climate favourable to innovation. Moreover, insofar as GI enforcement is concerned, the complexity of the system and the lack of efficient cooperation between enforcement bodies and stakeholders are two important issues. Enforcement of standards must be strict. Otherwise the value of the GI will be eroded.

(ix) Role of Government

In any protection system for geographical indications the involvement of governments is important in relation to their recognition and control over the use and enforcement. Producers often face significant constraints in applying for GIs registration.
Government should provide greater financial and technical support and capacity building, especially for small-scale producers and indigenous people for applying for, promoting and enforcing quality and origin standards. Government should recognise that producers are the primary stakeholders, even if they are less powerful than other actors (e.g. exporters), and producer organisations should be given support so that they can participate on a level playing field in multi-stakeholder processes. This support should include finance, capacity building and government policies that enable small producers to defend their rights. Further, government should support the creation or adaptation of national and regional, legal and institutional frameworks to prevent the false or misleading use of geographical indications, conflicts with trademarks or abusive generification processes. Quality is the main criteria for extending domestic and international protection to geographical indications. National governments of producer countries can have an important role in establishing quality standards. A balance is to be drawn between these practices, in order to gain broader acceptability of a GI in the domestic as well as world markets.

Apart from legislative changes in relevant GI laws, the Government’s initiatives should include upgradation and modernisation of the administrative framework covering Geographical Indications. The stabilization of the Indian GI system is linked to the formation of a broad network of actors and organizations, each taking on specific roles, and requiring permanent and dynamic governance at all levels. The distribution of competencies requires huge efforts to ensure that governance does not develop parallel conceptual models within different organizations. The main components of modernization include:

(a) Strengthening of infrastructure support;

(b) Comprehensive computerisation;

(c) Automation and re-engineering of work procedures;

(d) Human resource development through additional manpower; and

(e) Suitable training at all levels and liquidation of backlog.
(x) Millennium Development Goals

GIs have a role to play in reducing vulnerability to poverty, which refers to the first of the Millennium Development Goals (MDGs). GIs can significantly contribute to promote human development by helping countries like India to meet the targets set under the MDGs.

This study clearly shows that there is much room for improvement of the protection and enforcement of GI rights, although efforts and improvements from national authorities are also evident. The mission of government and other institutions should be to deal with the issues of economic development, propagation and the protection of GIs which is an important part of intellectual property. It is the strong recommendation of the researcher that India should review relevant legislation on the above suggested lines in order to protect its GIs. If the above recommendations are implemented, growth and development will be spurred on in numerous areas and sectors in India, including agriculture, handicrafts, foodstuffs and manufactured products.

GI protection has the potential to improve the condition of farmers and rural producers, who often do not see the benefits of Intellectual Property protection in the present globalized world. What is at stake here is more than just market economics and increased profits, as such products often reflect the heritage, tradition and culture of a place. It is hoped that this practical contribution will encourage policy makers and Indian producers to actively seek protection of the names of their products.

With the immense increase in the use of traditional medicines worldwide, protection of traditional medicinal knowledge has become an important concern. With the increase in demand for medicinal plants, exploitation of resources by the multinationals and absence of an effective system of protection, the urgent need for regulating access and benefit sharing has arisen. India is a most important resource collection centre for plants and traditional knowledge of system of medicines like Ayurveda, Siddha and Unani. As regards IP protection of traditional knowledge, it’s true that a dilemma prevails about providing patents to products and medicinal formulations, which are developed over hundreds of years.
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Geographical Indication as an instrument of Intellectual Property rights can be the way to protect traditional medicinal knowledge. What we need is a sui generis law combined with certain intellectual property rights. Legislation can be enacted taking into account the various regional differences in the matter, customary laws of various communities etc. Besides, we should give more priority to collective or community rights instead of individual rights. That way it will become more profitable to the communities to commercialize their knowledge. The traditional medicinal knowledge which is not yet in the public domain can be protected as trade secrets.