“What’s in a name?...

That which we call a rose by any other word would smell as sweet as it is”.

*William Shakespeare*

The trade of a particular product includes the honest identification of the creator of a product by a unique identifying symbol or mark. This symbol, or mark, could not properly be used by some other craftsmen. Another version of this idea is the branding of livestock in order to show to whom they belong.

Since times immemorial traders used to apply marks on their goods in which they trade. This indicated their ownership on these goods. These marks were to be demarcated as possessory marks. Practitioners of skilled crafts such as metal smithing developed among themselves associations known as guilds. The function of these guilds was to uphold the quality and integrity thought to be associated with the practice of skilled traders.

When the guilds terminated, it was not necessary for traders to apply particular marks to their goods. However, due to the inception of regional trade and Industrial Revolution, many traders continued to apply their signs or marks to the goods they manufactured. With the growth of the means of communication and dissemination of information, traders advertised their goods with reference to the marks which they used on their goods. Consumers of particular goods relied upon those marks for the quality and as Indicators of source of those goods. They began to rely upon those marks so as to take a purchasing decision.

When a consumer looks at a particular brand, the brand name indicates a particular standard or quality of the goods which bears that brand name. The brand name or the mark if used by unauthorised manufacturers subject them to liability. Such marks or brands do not only indicate liability of the unauthorised users but also indicate the source of goods, and their quality which is associated with that brand.
Geographical Indications is a form of Intellectual Property which has its origin in “mark”. It is an older concept, because the latter was engraved by Indian craftsmen on their artistic creations before sending them to Iran as long as 3000 years ago. This is envisaged by the World Intellectual Property Organisation (WIPO) in its Handbook on “Intellectual Property Law and its Uses”, in the following words:

“As long as 3,000 years ago, Indian craftsmen used to engrave their signatures on their artistic creations before sending them to Iran. Manufacturers from China sold goods bearing their marks in the Mediterranean area over 2000 years ago and at one time about a thousand different Roman Pottery marks were in use…”

The Geographical Indications are valuable to producers for the same reason that trademarks are valuable. Geographical Indications serve the same functions as trademarks because like trademarks they are applied and still officially used in the conventions and agreements administered by WIPO. The term “Geographical Indication” has been chosen by WIPO to describe the subject matter of a new treaty for the international protection of names and symbols which indicates a certain geographical origin of a given product. It embraces all means of protection of such names and symbols, regardless whether they indicate that the qualities of a given product are due to its geographical origin (such as Appellations of Origin), or they merely indicate the place of origin of a product (such as Indications of Source).

“Indications of Source” means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place, whereas ‘Appellation of Origin” means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural or human factors or both natural and human factors. In other words, the use of an Appellation of Origin requires
a quality link between the product and its area of production. This qualitative link consists of certain characteristics of the product which are exclusively or essentially attributable to its geographical origin such as, for example, climate, soil or traditional methods of production. Indications of Source on a given product is merely subject to the condition that these are:

- Source Identifiers;
- Guarantees of quality; and
- Valuable business interest.

Unlike Trademarks, Geographical Indications are community rights. Examples of Geographical Indications are “Florida” for oranges, “Idaho” for potatoes, “Vidalia” for onions, “Roquefort” for cheese, “Darjeeling” for tea from West Bengal and “Pashmina” for Pashmina and Kani Shawls of Kashmir etc.

One common feature of all those names is their geographical connotation, that is to say, their function of designating existing places, towns, regions or countries.

The importance of GIs has increasingly grown over the past decades. GIs can acquire high reputation and thus may be valuable commercial assets. For this very reason, they are often exposed to misappropriation, counterfeiting or forgery and their protection – national as well as international is highly desirable.

The very legal concept of Geographical Indications as a form of Intellectual property can be traced from the Paris Convention for the Protection of Industrial Property, 1883.

Article 1(2) of the Paris Convention states:

“The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellation of origin, and the repression of unfair competition”.
The another level of international protection of Geographical Indications (GIs) is the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891. The Madrid Agreement exceeded the level of protection given to Geographical Indications by the Paris Convention.

Article 1(1) of the Madrid Agreement Provides that:

“All goods bearing a false or deceptive indication by which one of the countries to which this agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries”.

Another International Instrument for the protection of GIs is the Lisbon Agreement for the Protection of Appellation of Origin and their International Registration, 1958. The Lisbon Agreement for the protection of Appellations of Origin and their International Registration of 31 October 1958 was an agreement open to any country who was a party to the Paris Convention. This was the first agreement to define the term “appellation of origin”, but does not use the term geographical indications. It defines the term “appellation of origin” as:

“The geographical name of the country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are exclusively or essentially due to the geographical environment, including natural or human factors”.

Besides these multilateral agreements there are Bilateral agreements also for the protection of these Geographical Indications (GIs).

Geographical Indications is itself a new category of Intellectual property right, which has been incorporated within the ambit of TRIPs Agreement. In the Doha Development Round of WTO negotiations, launched in 2001, WTO member countries are negotiating on the creation of “multilateral register” of GIs.
Since India is a party to TRIPs Agreement, so in order to comply with her TRIPs obligations the Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted. This Act is for the Protection of GIs which were earlier protected by the Trade and Merchandise Marks Act, 1958. The Act came into force with effect from 15th September 2003.

This Act applies to the whole of India, including the State of Jammu and Kashmir. The need for enactment of this Act is that unless a GI is protected in the Country of Origin, there is no obligation under Article 22 of the TRIPs Agreement on other countries to extend reciprocal protection. This will lead to generalisation of GIs.


In order to promote handicrafts in Jammu and Kashmir, Kashmiri Pashmina, Kani Shawl, Kashmiri Sozani craft, Papier Machie, Walnut woodcarving and Kashmiri Khatambandh were accorded Geographical Indication registration under the Act.

The present study is confined to the Geographical Indication status of handicraft items in the Valley of Kashmir. Kashmir and shawls are synonymous, and rest of the world has penchant for the embroidery and material used that brings warmth once put on. Customers enchanted at the first sight of Kani Shawls do not mind the price tag attached to it for its originality but of late this kind of art is vanishing due to onslaught from duplicate Amritsari and Kullu Shawls with the result, the traditional weavers have switched over to other foray.
The Guli Anar Kani Shawl Handloom Weavers Cooperative Society with some 110 members / weavers is now-a-days working under the chairmanship of Shri G.M. Kanihama and is busy in the revival of antique designs and the introduction of this handloom throughout the country by way of organising exhibitions. This society has already revived 12 antique designs but 8 more antique and delicate designs are yet uncovered. In this connection hard efforts will be required to trace the ancient designs and the same will have to be purchased in the form of their scripts before they will be brought on looms.

Out of 20 traditional designs 12 have already been revived and 4 are presented to Development Commissioner Handloom for Museum purposes. Now only 8 designs are pending and the society is keenly interested to procure these 8 designs and prepare their scripts and then bring them on looms. The names of the designs are:

i) Tulsi;
ii) Chambali;
iii) Bunafsha;
iv) Lily;
v) Gulisaba;
vi) Rezamisri;
vii) Shagufta; and
viii) Gul-e-Dawood.

These designs require an amount of rupees 15 lacs for their revival. Kashmir is the hub of such products which involve traditional knowledge as a form of intellectual property and its link to the products which have acquired special geographical recognition through characteristics essentially attributable to the country, region, or locality from which such products originate. Moreover,
results of traditional knowledge systems often reflect more than mere individual or collective creativity.

The Kashmiris have won a great reputation as artisans, and were celebrated in the old days for their skill in art manufactures. The chief centre of Kashmiri industries is of course Srinagar, but other localities are famous for their special manufactures. Thus, Islamabad turns out excellent embroideries. Kulgam is famous for its lacquered wood work, Bijbehara has a reputation for its excellence in wood carving, while as the villages of Zanageer circle are famous for their soft woollen cloth. Every Kashmiri seems to excel as a weaver, and the homespun cloth woven by the villagers and by the people in the city of Srinagar during any season of the year is highly appreciated both by Europeans and visitors from other countries.

The first shawls which reached Europe were brought by Napoleon at the time of the campaign in Egypt, as a present to the Empress Josephine, and from that time shawls became fashionable. Empress Josephine of France was the paragon of female fashion, had a wardrobe filled with rare Kashmiri Kani Shawls. Napoleon always wanted to get her the most exceptional shawls. Later, the Kani Shawl was made obligatory garment in the French Court also. Jamawar is the other name of Kani Shawl.

1.1. Statement of the Problem

Documents produced by UNCTAD, WTO and UNESCO have argued that crafts form a substantial part of a country’s cultural heritage. Skills related to such crafts must be protected in the areas of their origin as well as their affiliation to a community. The economic argument spelt out in such documents is that when these crafts are copied or exported without the consent of crafts people, they are deprived of earnings that are rightfully theirs. Imitated crafts also give a bad name to the original crafts to the detriment of the economic validity of original craft activities.
Kashmiri producers of handicrafts have often complained that outside imitations of original handicrafts of Kashmir undercut the real handicrafts of Kashmir thereby threatening the entire traditional handicraft industry including livelihood and highly developed skills. The number of unemployed youth is swelling and no government can afford to provide public sector jobs to them. The unemployment is also one of the reasons of the present discontentment in Kashmir. If the traditional crafts, for which J&K is known world over, are grabbed by the outsiders through false description or source of origin or imitation that will prove disastrous for Kashmir economically and will have far reaching political implications too.

Thus, there is an earnest need to identify and document the handicrafts in Kashmir for the purposes of registration under the Geographical Indication of Goods (Registration and Protection) Act, 1999 (hereinafter referred to as GI Act 1999). Needless to mention that unless these GIs are registered in India under the GI Act, 1999 their protection in other countries cannot be obtained as is the mandate of WTO.

1.2. Significance of the Study

Kashmir is an abode of eternal beauty and the Kashmiris have won a great reputation as artisans, and are celebrated for their skill in art. The geographical position, tradition of craftsmanship and the congenial climate are favorable factors for the development of several industries in the state. Combined with the latest machinery these factors are sure to change its very face. It is pertinent to mention that the State of J&K has not been a great attraction for investors and with the result industrial sector has not grown. The chief source of revenue has been tourism and handicrafts.

The most striking fact about the history of Kashmir is that its people rose to great heights of art, culture and economic prosperity primarily when the impulses came from outside rather than from within. Kashmir is the home of numerous artefacts in which Shawls, Woodcraft products, Papier Machie,
Chapter – 1

Introduction

*Khatambandh, Carpets, Sozni* embroidered crafts, Chain Stitch and Crewel are worth mentioning. There are writings available about these crafts mostly from the historical perspective. There is however no such documentation of these crafts which would make them potential candidates for registration under the GI Act, 1999.

There is an earnest need to identify those craftsmen who have given life blood to these crafts and by virtue of which their native places have earned name and fame. These craftsmen are focal point of the GI Act, 1999 for the purposes of benefit sharing. They have to be identified for the purposes of locus standi in case of any imitation of their craft.

Crafts play a significant role in economic growth of the State. Most of the crafts are based on traditional materials, traditional knowledge and local skills. As an export oriented sector, handicrafts are instrumental in foreign exchange earnings. It makes good economic sense to protect them legally under the GI Act, 1999.

1.3. Hypotheses

1. There is no adequate protection available to Kashmiri handicrafts in the GI Act, 1999.

2. There is no organised and comprehensive database of Kashmiri craftsmen available which could be used subsequently for any possible legal arrangement of beneficiaries.

1.4. Objectives of the Study

The present study has been undertaken with the following objectives:

i. To evaluate and analyse the GIs of Jammu and Kashmir in handicraft sector and the need for removal of obscurity in some provisions of GI Act so as to make it flexible according to the changing needs.
ii. To emphasise upon the quality control of handicrafts of Kashmir Valley and development of mega clusters for Kashmiri crafts at national and international level.

iii. To deliberate upon the issue how GIs are going to promote the socio-economic conditions of artisan community.

1.5. Research Methodology

The present research work is partly doctrinal and partly empirical. This involves the analysis of available literature, study of journals, Reports, proceedings, case law and opinions available in libraries, newspapers and internet. The study also involves field survey and interviews and discussions with various departments such as Directorate of Handicrafts, Directorate of Entrepreneur Development Institute, Controller General of Patents, Designs and Trademarks, Kashmir Chamber of Commerce and Industries, Craft Development Institute, KHPPT, TAHAFUZ, Craft Museum (School of Designs), Srinagar, Assistant Directors of Handicrafts different Districts in Kashmir Valley, Director of Entrepreneur Development Institute, Registrar of Patents, Designs, Trademarks and Geographical Indications and persons associated with handicrafts directly or indirectly. Both registered and unregistered artisans participated in the discussion.

1.6. Technique Employed

The Researcher employed Purposive sampling technique to collect the data and a self-constructed tool comprising of 18 items to gather information from the participants. The Researcher also employed Interview Schedule to interview various authorities of the Jammu and Kashmir Government associated with handicrafts.
1.7. Design of the Study

Chapter – I: Introduction

This chapter is introductory in nature. It discusses the concept of Geographical Indications and traces the origin of GIs briefly. It also deliberates upon the fact that how GIs will help in the protection of Traditional Crafts linked to Traditional knowledge. It also traces the History of Crafts and artifacts of Kashmir.

Chapter–II: An Analysis of the Law relating to Geographical Indications at International and National Levels

This chapter makes a detailed analysis of the Geographical Indication Law at the National and International levels.

Chapter–III: Legal Protection of Geographical Indications in Kashmir: Hassles and Hurdles with Special Reference to Handicrafts Sector

This chapter highlights the grey areas in the Indian GI law and their consequent impact on the handicrafts sector.

Chapter – IV: Kashmiri Shawls: A Legal Study of their Specifications and Post Geographical Indication Scenario

It discusses the history and specifications of Kashmiri Shawls which led to according them the GI status. The chapter also deliberates on the post-GI issues involved. This is the case study of Kashmiri Pashmina, Kani or Jamawar Shawls and Amlikar Shawl.

Chapter – V: Kashmiri Carpets: A Legal Study for their GI Status and Current Challenges

It discusses the proof of origin, uniqueness and specifications of Kashmiri Handmade silk carpet and Kashmiri woollen carpet. It also deliberates upon the similar aspects of some Kashmiri rugs such as Namdha felt and Gabba.
Chapter- VI: Kashmiri Wood Work: A Legal Analysis from GI Perspective

It discusses the proof of origin and specifications of Pinjrakari, Walnut Woodcarving and Khatambandh crafts for according them GI status. Further, the chapter discusses the post-GI issues and challenges involved in Woodcarving and Khatambandh crafts.

Chapter – VII: Chain Stitch and Crewel Embroidery

This chapter discusses the geographical specifications of the Crewel and Chain Stitch Embroidery crafts which lead to their Geographical Indication status.

Chapter-VIII: Papier Machie and Miscellaneous Crafts: GI Specifications and Current Challenges

It deliberates upon Papier Machie and other miscellaneous crafts such as leather, fur work, wicker work and metal work as potential GI.

Chapter IX: Problems and Prospects of Kashmiri Handicrafts: An Empirical Evaluation

This Chapter makes an empirical evaluation of the problems faced by the artisans particularly and emphasises upon the prospects of Kashmiri handicrafts generally as Geographical Indications.

Chapter – X: Conclusion and Suggestions

It concludes the whole research work and provides suggestions for making the present law compatible to the handicraft sector in J&K in relation to GIs.