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Geographical Indications – Law and Policy perspectives: A case study with reference to Andhra Pradesh
Chapter 1 – Introduction

The rapid growth of international trade has brought markets closer than ever before. Given the extent of liberalization in international trade, a concern amongst others is based on the protection of Intellectual Property Rights (IPRs) for the goods / products that find themselves in markets at the other end of the world.

The family of Intellectual Property (IP) is diverse and therefore the concerns that arise over its protection are also varied. In the context of international trade the Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO) determines issues concerning IP. The TRIPS agreement came into force on 1st January 1995 is perhaps the most comprehensive multilateral agreement on IP.¹

TRIPS sets minimum standards that essentially cover the following types of IPRs:

(a) Copyrights and related rights, (b) Trademarks, (c) Geographical Indications
(d) Industrial Designs, (e) Patents, (f) Lay out designs of integrated circuits and
(g) Protection of undisclosed information (trade secrets)

¹ http://www.wto.org/english/tratop_e/trips_e/intel2b_e.htm
Given the fact that IP fundamentally is territorial in nature addressing the issue of protection from the standpoint of trade becomes critical to a nation’s success or failure when goods originate from a specific location.

The territorial nature of IP poses another potential problem in international trade as the product may be adequately protected in the country of origin due to legislative mechanisms available locally but may not find the same or similar level of protection in other jurisdictions where forms of protection could drastically vary.

From Darjeeling tea to Basmati rice, India has seen a wide range of products originating in the country that have made a name for themselves in international markets. These products have found a niche because of the quality associated from their point of origin. Various conditions give rise to quality of the product such as the soil conditions, environmental and human factors etc.

This point of origin and quality of the product associated therein is a field of study in the IP family dealt under the concept of Geographical Indications (GIs).

GIs play a very similar role to that played by trademarks i.e. both types of IPRs are used for the purpose of identification of products. The key difference is that GIs, while identifying products have a specific point of geographic origin in
their creation while trademarks are not linked to any specific geographical areas.

One reason for the development of GIs as a separate branch in the field of IP study is that trademarks as a means of protection create restrictions on the use of geographic terms. Another crucial reason is that GIs are not granted to specific individuals but are regarded as collective rights. That is to say GIs cannot be owned by individuals unlike trademarks. The rights granted by GIs can also not be assigned, transferred, sold or franchised to any other person unlike other forms of IP.

Different countries have sought to look at GIs and protect them according to policies best suited to them. Although having been an integral part of the TRIPS agreement the system of GI protection has evolved on two levels.

Currently there are over 160 countries that offer protection to GIs in one form or another. Some of these countries such as Canada, United States of America (USA) and Australia have sought to offer protection to GIs through their existing mechanisms of trademark/collective and certification marks. Other countries such as India, Vietnam, Colombia and the European Union (EU) have enacted specific legislation (sui generis systems) to protect GIs.

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Some well-known GIs include Scotch (for whisky from Scotland), Champagne (for sparkling wine from the region of Champagne in France). There are numerous other such products which have an intrinsic quality link to their point of geographic origin.

Currently there is no single international registry or database detailing protected GIs across the world. The relevant National offices dealing with GIs have that information available. The EU has a database that caters specifically to details on protected wines (E-Bacchus database)\(^3\) and a database for Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) as also Traditional Specialty Guaranteed (TSG) for which registration has been applied in the EU (DOOR database)\(^4\).

A system for the multilateral notification and registry of geographical indications for wines and spirits has been in the works since 1997, when Article 23.4 of the TRIPS Agreement was agreed to by WTO member states. The purpose of the system would be to facilitate the protection of GIs on an international scale. In 2001 the Doha Declaration affirmed this mandate.

However ever since the 2001 Doha Declaration there has been a tug-of-war on how to implement the system between two factions, one lead by the European Community (EC), India, China (the Draft Modalities proposal) and another by


\(^4\) [http://ec.europa.eu/agriculture/quality/door/list.html](http://ec.europa.eu/agriculture/quality/door/list.html)
the U.S., Chile, Argentina, New Zealand, and Australia, among others (the Joint Proposal).⁵

Given the vast number of products that have an intrinsic link to their geographical locations it is imperative to not only protect them for the benefit of the local economy but also look at policies that enable their effective utilisation and development.

Providing strong protection to GIs as in the case of trademarks can help maintain the goodwill that the GI product generates given its link to quality.

Consumer confidence increases over a period of time with extensive use of a product to which the consumer has come to identify based on the trademark. If the quality of the product remains consistent an incredible amount of goodwill is created in the market for that particular trademark. The same is true for GIs where consumers start to identify products of certain quality based on their geographic area of origin.

There is however one school of thought that suggests that a product having merely originated from a geographic location should not be protected unless a

⁵ https://winelawsandiego.wordpress.com/tag/geographical-indications/
certain amount of goodwill has been generated. This argument however does also give rise to potential threat of dilution of the GI before it can be protected.\(^6\)

The producers in the case of the trademark and the GI would only have incentive to continuously provide that quality if adequate means of protection are available to them, which in turn provides them with not only goodwill but also a tremendous earning potential.

There is no argument against giving protection to GIs however the nature and level of protection that is given and the policies adopted by nations on its further development will determine the impact that the GI has on a particular economy.

The degree to which GI protection spurs development and protects local environmental and cultural resources depends in large part on the structure of the GI legislation and the political-economic context in which protection is embedded.\(^7\)

Nations that seek to benefit from GIs in their country need to look at mechanisms beyond mere legal protection. Engagement with countries where the products are finally sold to ensure their protection as also enabling local


development and management of the GI through various schemes and subsidies should also be built in as part of their GI protection strategies.

### 1.1 Previous Studies

The field of GI and its protection as also the socio-economic benefits has been studied to a fair extent. Numerous authors have dealt with the subject in great detail outlining issues pertaining to the legal protection of GIs as also in the context of international trade and social welfare. Some studies have focused on specific products while others have explored a more general understanding of GI and the issues therein.

Amongst the numerous studies on GI and its encompassing issues the following have been highlighted as previous studies in this field in light of why this researcher chose to carry out this study:

a) Dr. Dwijen Rangnekar’s empirical study titled ‘The Socio-Economics of Geographical Indications’ has explored the GIs in the European context.

b) Shahid Alikhan’s ‘Socio-economic benefits of intellectual property protection in developing countries’ has also addressed the concerns with respect to GIs as a part of the study.

c) PK. Vasudeva’s ‘India and World Trade Organisation: planning and development’ has addressed the issue of subsidies but not specifically focused on subsidies in the GI sector.
While numerous authors and commentators have addressed GIs and socio-economic issues including considerations of Agricultural subsidies, to the best of this researcher’s knowledge there has been no study thus far which has looked into GIs and Subsidies as a policy of the Government. It is also pertinent to note here that this current study looks at GIs with specific reference to the State of Andhra Pradesh.

1.2 Research Methodology

Aims and Objectives

Rapid globalization and increased international trade especially in the context of WTO have given rise to countries realizing that GIs just like any other IP is a valuable asset which can be used as important marketing tools to facilitate trade. Since the TRIPS agreement was brought into force the importance of IP has been put at the forefront of international trade.

GIs play very crucial functions in trade and commerce, they not only act as identifiers of the source and quality of products but also significantly serve the interests of consumers and producers. Another essential feature of GIs in the context of globalization is that they help prevent the misappropriation of names of products and thereby avoid deceptive practices by some producers to mislead the public.
India has enacted legislation for the protection of GIs and followed the EU system of providing a sui generis system. This shows the nation’s commitment towards GIs being seen and protected as a valuable asset. However merely offering protection is just one aspect of utilizing GIs as a national asset. It is important that the government consider other means and mechanisms that can help in the development and management of GIs.

The primary aim of this study is to explore just such a possibility as mentioned above. However to fully comprehend the issues pertaining to GIs it is at first essential to go to the genesis of what has brought about the need to protect GIs. A conceptual analysis therefore becomes imperative. The essential objectives of this study are to:

a) Understand what is meant by and constitutes a GI as also its origins in the first place.

b) Look at the various international agreements and texts that deal with the issues of GI.

c) Consider the legal and economic perspectives vis-à-vis GIs.

d) Consider the contrasting position between the US and the EU in their outlook to GI protection.

e) Analyse comprehensively the GI protection mechanism in India.

f) Understand the issue of subsidies in India with special emphasis on Andhra Pradesh.

g) Identify some GIs that have been registered in Andhra Pradesh.
1.3 Scope and Limitations

Given that numerous studies have been conducted in the field of GIs, the scope of this study will be to consider the genesis of GIs and understand them in the international context. The study of IP is significantly voluminous and therefore other than issues pertaining to the link between Trademarks and GIs as also Traditional Knowledge and GIs no other form of IP will be considered and shall be kept as a limitation of this study. The study of subsidies will be considered in the Indian context while touching upon the WTO issues of subsidies. A special reference will be made to the subsidies in the state of Andhra Pradesh and other State subsidies in India will have a limited mention. The topics and chapters have been chosen keeping in mind that the study needs to consider GIs in AP and its potential for development which can result in international trade and commerce of the AP GIs.

1.4 Research Questions

The research questions that have been considered in this study are:

1. What are the socio-economic and political needs of protection of GIs?
2. Is the current framework of GI protection in India adequate?
3. Is the Indian Legislative framework on GI protection TRIPS compliant?
4. What are some of the benefits of GI protection?
5. What is the rationale behind grant of subsidies?
6. What are the different types of subsidies available?
7. What are the merits and demerits of subsidies?

8. What is the subsidies position in the state of Andhra Pradesh?

9. Do GIs in Andhra Pradesh require subsidies?

### 1.5 Hypotheses

The hypotheses formulated by the researcher are:

1. GI protection increases marketing avenues and brings about economic value to protected products.

2. Subsidies have both a positive and negative impact.

3. Subsidies require efficient monitoring and implementation systems.

4. An effective system of subsidies in AP would benefit the producers of protected GI products and have a larger socio-economic impact.

5. For achieving effectiveness, subsidies should be well designed, transparent and focused and permanent subsidies may not be beneficial to the state.

### 1.6 Study Approach

The research methodology adopted for this study will be analytical, interpretive and critical. Constructive research and a qualitative study will be attempted on various issues pertaining to GIs.
The research will use a combination of literature review, case laws, case studies, legislative analysis, international treaties and agreements and regulations. A comparative style of analysis will be used which will then follow a detailed analysis.

The literature will be first be used to gain an understanding of the potential possibilities of the researchers hypotheses keeping in mind the research questions sought to be answered by the researcher. While all various areas of GIs have been analysed by previous studies the potential problem that the researcher wishes to address will also be studied as part of the review of literature.

Based on the analysis of the literature available a framework for the study of GIs in the context of socio-economic benefit will be established. To gain an understanding of what constitutes GIs and its genesis as an area of IP law an analysis of the available literature will be undertaken.

The literature review will also enable the study and thereafter highlight the contrasting perspectives of the US and the EU in GI protection which will essentially be undertaken to gain an understanding of the varying issues surrounding GI protection.
Critical analysis of the Indian law on GIs will be undertaken to enable an understanding of India’s position vis-à-vis GI protection. The review of material pertaining to subsidies will help in the outlining of the Indian Government’s policies on subsidies as also the position of the Andhra Pradesh Government on subsidies.

Lastly highlighting some of the GIs from the state of Andhra Pradesh from existing National IP offices will help in the formulation of understanding whether subsidies are needed for the AP GIs.

1.7 Sources of Data

The sources of data for the purpose of this study will be vast and varied. The relevant material shall be collected from sources which are legal and non-legal. Legal books, journals, judgments of the various courts, both national and international, International law reports, magazines and newspaper articles, reports of the governments, commentaries, material from the world wide web especially the World Trade Organisation and the World Intellectual Property Organisation, other doctoral theses and research work and national and international IP offices shall the primary sources of data.

The material will not be restricted to legal research and writing alone. Disciplines such as trade and commerce also marketing resources will form part of the sources of data for this study.
Care will be taken to obtain data from reliable sources alone, however in some cases (especially the world wide web) where some authors may have commented on the subject (well cited) the resources may be less reliable. All sources of data that will be used shall be referenced and acknowledged by way of footnotes and thereafter in the Bibliography and reference section of this study. The citations have been made as per the requirement of the resource accessed and where no such requirement has been mentioned the researcher has used the appropriate and accepted style of referencing.

1.8 Chapterisation

This study has been divided into six chapters in all (including the current introductory chapter).

The study essentially starts from Chapter 2 by looking at GIs from a retrospective and prospective viewpoint. The aim of this chapter is to understand what the meaning of GIs essentially is. In order to do this it is imperative to see GIs in the context of the family of IP laws and understand the same from a historical perspective. The chapter will consider GIs in light of the various international agreements to provide the retrospective outlook and thereafter consider the current issues being faced by looking into aspect of the Doha Development Agreement.
The third chapter will focus on the legal and economic perspectives of GIs. These perspectives will be covered through the understanding on the need for GIs protection and the importance of such protection. The contrasting views of the US and EU will also be detailed which will enable a clear understanding of the legal issues that arise vis-à-vis GI. Thereafter the Indian perspective of GIs will be considered in light of the Indian law on GI protection. A note will also be made on the linkages between trademarks and GI as also Traditional Knowledge (TK) and GIs. This would help in highlighting what can be considered as GIs even in the TK field.

The fourth chapter looks at the policy perspectives of the Government of India with respect to subsidies. The benefits, rationale and merits and demerits of subsidies will be considered in this chapter. Thereafter a note on subsidies in India as also in the State of Andhra Pradesh will be made thereby providing details on the position of subsidies available.

The fifth chapter shall highlight a number of GIs that have been registered and protected in the state of Andhra Pradesh. A brief note on a potential product in that may be eligible for protection by way of a GI will also be made, thereby making the case for the state of Andhra Pradesh considering a robust mechanism for identification and protection of GIs therein.

The sixth and final chapter will provide the conclusion to the study and summarise the study in its entirety. The answer to the research questions and
verification of the hypotheses will be brought about in this chapter. This chapter shall also highlight some of the avenues of further research that may be undertaken pursuant to this study.