Chapter 7 - Conclusion and Recommendations

Introduction

The general objective of this study was to examine and hence provide sound recommendations which India should opt regarding the protection of GIs. The main objective was supported by the following specific objectives: Examination of existing potential GIs from value chain governing structure in the light of the Economic rational of protecting them.

While a lot of research has been done on the contribution of Intellectual property including GIs towards economic development relatively un-searched part is the contribution of IP towards the development of human rights and human capabilities. Governments have a responsibility to protect human rights and enhance human capabilities; economic development including that which is proposed through IP can contribute the same. However the ‘analytical framework provides formidable challenges posed to the development of human rights to development posed by contemporary forms of economic globalization’

This requires the integration of many different policy aspects at the local, national, regional and international levels to ensure the system is transparent, enforceable and efficient.

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This chapter revisit the research problem and objectives set out in chapter one, and evaluate them in the light of discussion done under chapter two, three, four, five, and six. Thereafter conclusion is drawn as to the possible benefits and impacts which India as a bloc might earn and or face from protecting GIs.

Based on such conclusion, recommendations are given focusing on aspects of GIs from value chain governing structure in the light of socio-economic perspective. It touched upon the various and contrasting issues in the international arena. This study has also looked at the various GIs that had been registered in the state of Karnataka.

**Revisiting the research problem**

Chapter one provided a back ground to the problem by stressing that, the protection of GIs at multilateral level is among other contentious issue that delays the Doha negotiations. 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 the US , Chile , Argentina, New Zealand, and Australia, among other [ the Joint Proposal] In line with the protection of GIs, two blocs are in contest. The first is the bloc led by the EU which prays for extension of protection afforded to wines and spirits to include

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527 http://winelawsandiego.wordpress.com/tag/geographical-indications/
even other type of GIs. As well as formulation of multilateral register for all registered GIs. The second bloc is led by the US, who generally oppose the idea of extending protection of GIs apart from that given to products of wines and spirits, and also they refute the notion of establishing multilateral registration system as it will create unnecessary costs to the WTO members.

The territorial nature of IP poses other 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 protection in other jurisdictions where forms of protection could drastically vary. For instance, 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.

Thus, in the light of such divergence, the objective of this study was to examine and hence provide a sound recommendation as to which option should India as to opt. And it was further stated in the thesis statement that, there are abundant potential GIs in India and their protection can result to profound and positive
economic contribution to the region, hence India should opt for the protection. This study amongst other things considered aspects of GIs from a socio-economic perspective. It touched upon the various and contrasting issues in the international arena and there after looked at the various GIs that had been registered in the State of Karnataka.

Chapter Two: Chapter two addressed the concept of GI, 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 Intellectual Property laws and understand the same from a historical perspective. The chapter will consider GIs in light of the various legal systems, generally it is seen that the concept addresses products which have qualities linked to their geographic origin. Moreover the chapter discussed various legal framework used to protect GIs at multilateral, bilateral, unilateral agreements. The discussion elucidated legal development of GIs protection internationally; by examining multilateral agreement concluded before the coming into force of the TRIPS agreement.

The third chapter elucidated legal development of GIs protection internationally, until the entry into force of the TRIPS Agreement, global protection of GIs was mainly based on the limited protection offered under the Paris Convention. It would also be significant to note that the Paris Convention and the Lisbon Agreement had great influence on the TRIPS Agreement, specifically in relation
to GIs. The chapter examines consider GIs in light of the various international agreements to consider the current issues being faced by looking into the aspect of the Doha Development Agreement.

Chapter four of the thesis elucidated the contrasting views of the US and EU so as to highlight mainly the legal issues related to GI. The US does not have a specific legislation for protection of GIs but are protectable under the trademarks, collective or certification marks provisions of the Lanham Act. The EU on the other hand has a very stringent outlook to protection of GIs. The EU has also sought enhanced protection and has also proposed the claw-back provision which effectively seeks to have the WTO members protect some 41 GI terms exclusively and also revoke any previous trademarks granted for those terms. The proposal has not found favour with WTO members. The Indian perspective of GIs has been discussed in the second part by taking in to consideration of the Indian law on GI protection, in line with its TRIP 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 induction 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.

It may be concluded from the discussion of Chapter five that, India have number of products which has the reputation and unique qualities in the world market, hence qualifying to be considered as GIs at regional level as well as at multilateral level. The list for potential qualifying GIs in the region is quite reasonable to the extent that they can contribute enormously in the Indian Economy.

The following are the some list of potential GIs which are found in India are Darjeeling [tea], pochampalli Ikat [textiles], chanderi [sari], kancheepuram silk [textiles], Kashmir pashmina [shawls], kondapalli [toy], and Mysore [incense stick]. While handicrafts have been the most registered GIs consistently, agricultural and manufactured products are increasingly being protected under the GI Act. There are many states, which have several traditional varieties of agricultural products or handcrafts, are not forthcoming in applying for GIs.

Chapter Six undertakes an in-depth study of the GIs that have been registered in the State of Karnataka. The GIs in Karnataka have ranged from significant

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528 Pradyot R Jena, Post doc research fellow, Institute for Environmental Economics and World Trade, University of Hannover, Konigswarther Plats 1, 30167, Germany; Professor, Ulrike Grote, Institute for Environmental Economics and World Trade, University of Hannover, page 13
number of potential GIs products that may qualify for protection as GIs, ranging from sarees to handicrafts, paintings, toys and food items. The range of GIs indicates that the state has a variety of product that can lead to economic and social welfare for the people of State of Karnataka. If effective policies are implemented for the producers and regions from where these products originate, then these can look at sound socio-economic development. 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.

It follows therefore that, India might reap much benefit by protecting GIs, due to the fact that, GIs as development tool in a wide sense. They have profound benefits not only to producers, but also to consumers and local communities. They create added value and improve market access, while providing for the protection of local know-how and natural resources. Moreover, GI are considered to be a tool for promoting Rural Development, as they have positive socio-economic impact on local communities. They increase production, create local jobs and help producers to obtain premium price for their products in exchange for guarantees offered to consumers on production methods and quality. Furthermore, as GIs facilitate better redistribution of the added value in the production chain, they bring value to the land of origin and also have other
indirect positive effects, such as in tourism industry. Indian producers will also use GIs as a tool for securing market access. It is empirically proven that GIs encourage variety and diversity of production. They allow producers to market differentiated products with specific characteristics that are clearly identifiable. As such, GIs are an excellent market access tool. Meanwhile in the context of globalised markets, consumers are increasingly looking for unique quality products with a specific origin. India has diverse natural resources, biodiversity and traditional knowledge which need to be preserved. Thus, with the protection of GIs which are considered to be a tool for promoting and encouraging the preservation of biodiversity, local know-how, naturally resources and food security protecting them might be a parallel benefit of protecting them.

However on the other side of coin, it is evident from the study that, protecting GIs in India will be associated with certain negative impacts. GI protection might be a barrier to trade in terms of market access. For instance certain existing products in the market will have to be relabeled. This is a concern to those products which are now sold while labeled a misleading source of origin in the public eyes.

Moreover the extension would involve extra costs for governments, administratively and financially. Because of the need of restructuring the existing
legal framework as well as managing the institutions that will govern GIs. On the other hand producers will incur extra costs due to trade and production disruption. And consumers might suffer costs associated with the so called ‘consumer confusion’ if any.

**Contribution and implications**

The present study by the researcher contributes to existing literature on Geographical Indications by addressing aspects of value chain governing structure that should be considered in the light of the socio-economic benefits of GIs. The researcher was mainly focused on marketing side, analyzing the governance factor and the distribution of profit margin in the chain. In this process the commonalities amongst value added products that indicate sustainability specially production and marketing aspects.

A geographical indication successful in the market becomes an asset of the producers authorized to use it, since it generates accumulated goodwill. Without such protection, it would be difficult for such producers to appropriate the benefits from maintaining the quality or other attributes of their products and would, hence, have little or no incentive to invest for that purpose. The connection between product and region allows for niche marketing, brand

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529 Means social value, cultural value, economic value, niche market etc.
development and extracting value from reputable indications. Moreover, the economic value of geographical indications is not limited to the additional rents they may generate to producers. There are also other, less quantifiable, benefits such as the possibility of generating employment, increased income or retaining population in certain regions.

The innovative and new developments taking place in the world in the fields of science and technology, trade and business and other evolving areas need to be encouraged. In that context, promoting GIs should be encouraged so as to optimize and enable these products to reach world markets. This would possibly results in the effective development of the socio-economic conditions of the producer and the region.

There is very little awareness or expertise in filing GI applications. The awareness is also limited in knowledge of what constitutes a GI. The advantages of brand image, better recognition / acceptability of the product and better price are lost to the producers by non-recognition of a GI. Moreover, there is a danger of others hijacking and filing GIs for the products already in public domain which may result in prolonged and expensive litigation to undo such damage.

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530 Rangnekar, D [2002], ‘The socio economic of GIs: A review of empirical evidence from Europe’. Capacity building project on intellectual property rights and sustainable development: UNCTAD/ICTSD, pg.6
There is a scheme of Government of India in Ministry of science of Technology to address such issues by starting an IPR cell in every University. There are some institutions like ,the FISME\textsuperscript{531} is planning to set up an IPF\textsuperscript{532} centre in the city. Once the IPF centre becomes operational, it will be easier to get geographical indicator tag for hundreds of products in accordance with the WTO agreement.

FISME will set up IPF centers at Bangalore, Hyderabad and New Delhi which will assist individuals and entities in registering patents and searching and maintaining portfolio. The facilitation centers will also advice the MSME’s with technical and legal advice in utilizing patent related matters. Besides, the online portal of MSMEs to register intellectual property rights will be going to launch\textsuperscript{533}, CII\textsuperscript{534} can also be involved in these issues. These institutions must be encouraged to identify GIs and create awareness on filing applications for recognition and render all assistance needed till registration is granted by the GI offices.

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

The researcher can state that based on the extensive literature researched and reviewed and the study undertaken on the economic perspectives of GIs; protection of GI products will indeed increase marketing avenues and thereby provide not only economic but also social value. For instance, The estimation of

\textsuperscript{531} FISME- Federation of Indian Micro and Small and Medium Enterprises
\textsuperscript{532} IPF- Intellectual property facilitation
\textsuperscript{533} Deccan Herald Newspaper-Jan 13 .2013 by Harsh Raj Gatty , ‘ Intellectual property facilitation centre soon’
\textsuperscript{534} Confederation of Indian Industry
export\(^{535}\) volumes of Kashmir pashmina - is 52\%, and its export tendency is stable and value of production in million euros 4.80 : export\(^{536}\) volumes Kani shawl is 78\% of export volume and export tendency stable and its value of the production in millions euros 0.60; Kashmiri sozani craft is 66\% of export\(^{537}\) volumes, and export tendency stable and its value of the production in millions euros 2.25. Darjeeling tea is another major GI from India in terms of its exportability. Around 98\% of Darjeeling tea produced in India is exported. In 2006, the total exports of Darjeeling tea was 11.5 million kg, which fetched around Rs.917 million [approx. US $ 20.3 million] as export earning, from this it is very clear that the trade value of protected GI products is a strong indication.

**GI has both positive and negative impact**

An analysis of the legal framework as well as experiences with registered GIs, the researcher has confirmed this hypothesis based on the understanding of the various issues associated with the subject. An important dimension of GI is that it does not protect knowledge or technology as such. It only protects the name or indication. This essential by means that the famous Banarasi sari can be produced anywhere in the world but it cannot be named ‘Banarasi sari’. For a price conscious consumers, it might not make much sense to buy GI certified products at a premium, if the same product is available elsewhere. There are

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\(^{535}\) UA, Europe, UK, Middle east, Japan, Thailand, Malaysia, Nepal

\(^{536}\) UA, Europe, UK, Middle east, Japan, Thailand, Malaysia, Nepal

\(^{537}\) UA, Europe, UK, Middle east, Japan, Thailand, Malaysia, Nepal
some products protected through GI has indicated that the protection is not only creating a mechanism for securing the product from unauthorized mass poaching of the unique products but also brings about some positive changes in the terms of price, quality and productivity. For instance, Pochampally was the first textile product to get registered under GI and they have achieved innumerable success, in terms of publicity, market, awareness, brand building and sales of the Pochampally products.

**GI requires efficient monitoring and implementation systems.**

It should be noted that the Government activities currently related to GI is concentrated mostly on registering GI products where the state governments are acting in haste. Identification of GI based product and their registration is happening without adequate examination. Groups filing for GI registration do not assess the commercial prospect of a GI product in the domestic and international markets or the potential of such registration in contributing towards the future growth of the product as well as the socio-economic implication for the communities involved in the supply chain. Moreover, post-registration, there is need for promotion and continuous awareness building particularly among the consumers\(^{538}\). There currently exists no standard procedures for consultation before registration and it is most probable that pre-application process may end up in inadequate retailers. While marketing and

\(^{538}\) All India Artisans and Craftworkers Association [AIACA] 2011. Geographical Indication of India, socio-economic and development issues, policy brief, New Delhi: AIACA
promotion efforts may need sustained commitment of resources, yet there is no guarantee of such success particularly for new GI products. There is also constant need for building capacity and awareness about GI among various stakeholders including consumers. All these issues will need to be addressed for GI registration to serve the desired goals of providing an assurance of quality to the consumers and socio economic benefits to the producers.

An effective legal and institutional structure in Karnataka would benefit the producers the protected GI products and have a larger socio-economic impact. The study proves with certainty that an effective value chain governing structure in Karnataka will indeed benefit the producers of protected GI products. The fact that the State was among the top one states with in the Union of India. The diverse range of GI product available in the state is a strong indication of how these producers can enable generation of income for themselves and in turn for the state and community.

**Recommendations**

It is shown in the research study that India has several potential GIs that qualify for registration. And there are a number of economic, social and ecological benefits for protecting GIs. Meanwhile, though legal and institutional structure are not adequately built, still there are several existing institution which if coordinated and utilized can cater the need of protecting GIs in the region. Thus,
following the above observations it is recommended that India opt for the following measures for:

1. Indian economy depends to a large extent on the contribution of agriculture. And it is further evident that India has a comparative advantage over EU in terms of agriculture. Meanwhile improved trade in agriculture is among other points of strength pushed by India in Doha Negotiations. Hence from the same angle, many of the Indian GIs are agricultural related products of which their recognition and protection might add much value and hence gain niche markets in the EU Market. Hence, due to the fact that India have been praying for a long time over fair and accessible agricultural trade liberalization in the world market and EU in particular.

2. In the wake of the deadlock existing at the multilateral trade negotiations at the WTO, international trade is shifting towards regional and bilateral free trade agreements and GIs are featuring prominently among the negotiation issues, including in the ongoing Indo-EU Food trade agreement. In the light of these developments, rigorous analytical studies on impact and implications will prove to be useful in chalking out negotiating positions for India.
3. Moreover, it is further recommended that for India to have and appreciable result over GIs protection it has to agree with the EU on the reasonable standards for protection. Because EU has been protecting GIs for more than a century, and it has developed a well founded institutions to govern the same which is not the case for India. Otherwise GIs recognized in the India might not be recognized and protected in the EU, because of stringent rules of recognition applicable in the EU. For instance the EU’s council Regulation No 1082/92 provides two levels of protecting GIs, the first is the one governing PDO while the second one is that governing PGI. Therefore this kind of complexity should be harmonized in the economic partnership agreement so that a fair and certain standard comes into play.

4. Also in order to reduce the administrative costs for restructuring or reintroducing new legal framework and institutions for GIs protection, India can use the existing legal environment with a minimum amendment to protect GIs as an interim measures. This is allowed by the WTO as WTO members have been allowed to adopt any mechanisms to facilitate protection of GIs provided they do honour the minimum requirements set in the TRIPS Agreements. More over there is no set in model or standards
under WTO rules which binds members to comply with mutatis mutandis.

5. Meanwhile, it is evident that most of the Indian GIs are agro-based and handicrafts hence they are even governed by Marketing Boards and some are under co-operative societies. Hence with this fact it is easy to regulate the standards adored by the consumers and at the same time it reduces the costs of managing and re-establishing new institutions to monitor the existing GIs. Moreover for those which does not belong to any of the aforesaid institutions can also be regulated by the existing institutions governing other intellectual property rights such as those institutions administering industrial property rights and or trademarks registrations, as it was recommended above that as an interim measures the existing law can be couched to cater the need of protecting GIs as well.

The study addressed several basic aspects relating to protection of GIs in the Indian context. However much research remains to be done with in the India, and the following are suggestions specify what should be done in future relating to GIs protection in India.

1. In future research aiming at knowing all possible existing potential GIs in the community should be conducted. Moreover, for those potential GIs
which will be surveyed, research should be done to see whether factors such as specificity, coordination etc are specifically relevant in the context of India.

2. It is important in order to fix a benchmark for comparison when specific product will be protected via-a-vis its previous performance. Also looking the performance of Indian potential GIs in the EU is very relevant because, a product can be protected in the community as GI, but the targeted market in this regard is the EU market. Therefore EU's consumers’ perception over India should be studied to evaluate possible chances of winning the market.

3. Multidisciplinary researches involves technical assessment of products’ quality vis a vis the soil, climate, or local know how used in producing such product. Also to know what makes Indian consumers perceive certain product ‘reputable’, is it because of the characteristics attributable from its place of origin or simply the guaranteed quality assured by the brand name.

4. Extensive gaps exist on operationalizing GIs and this is where the focus of the Government needs to be addressed. Well-crafted policies and
strategies on post-GI mechanisms are required for marketing, distribution, branding and promotion of the Indian GI products to realize the commercial potential of Indian GIs. There is the need for setting up a national level fund for fighting against infringement, brand building and promotional efforts of GI products. Best possible efforts should be made to sensitize and make the concerned GI community aware through a series of workshops and consultations to ensure maximum level active participation in the process for GI registration. This will in turn translate into socio-economic benefits to the community flowing from GI registration.

5. The implications of GIs in the context of rural development in India need to be studied especially for sectors like agriculture, fisheries, crafts and artisanal works that provide livelihood for a large section of the poor in India.

6. The knowledge underlying a GI remains in the public domain; hence misappropriation of the embedded knowledge is not protected against. For example, in handicrafts, the technical content will not be protected as a technical idea under the GI, while the cultural value as form of
expression and its distinctive characteristics do get protecting through marks or indications of geographical origin. Hence, GI should be considered as part of a a wider set of policies measures that seek to protect and reward indigenous knowledge. If needed, the technical components of the handicraft could also be protected through other IPRs.