Chapter: 1 Introduction

Background

The rapid growth of global trading system 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 for the good/products that find themselves in markets at the other end of the world.

In the context of International Trade the World Trade Organization deals with the rules of trade between nations at a near-global level. The WTO has three basic functions: Providing set of rules for international trade, being a forum for negotiations and forum for monitoring of trade rules implementation and for resolving disputes between Members. The WTO is a member driven organization, and takes decisions on the basis of consensus. The TRIPS of the WTO Agreement covers the main area of intellectual property: Copyright and related rights, Industrial property rights, including trademarks, geographical indications, industrial designs, patents etc. The TRIPS Agreement provides for a minimum level of protection. GI represent a complex and controversial issue, both at national and international levels. They involve not only considerable commercial and economic stakes but also important socio historical and cultural dimensions.
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 Jurisdiction 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. Thus Geographical Indications are collective intellectual property rights, which identify a good as originating from a specific geographical region. The quality and reputation of these goods are to a large extent attributable to their geographical origin, and therefore their names refer to their region of production.

GI's play a very similar role to that played by trademark i.e. both types of IPRs are used for the purpose of identification of products. The key difference is that GI's, 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 GI's 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 GI's are not granted to specific
individuals but are regarded as collective rights\(^1\). 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.

At multilateral level protection of Geographical Indications has posed political and economic debate amongst members\(^2\). Fundamentally, the debate is not divided along traditional North-South lines, because in most cases Northern countries such as the USA and an EU tend to unite while discussing contentious issues against Southern countries in the WTO\(^3\). There are two groups, one supporting the EU position which includes even developing countries in the south and the other group is led by the USA which is supported also by some southern developing countries such as Namibia.

However, what is in the core is that the EU proposes among other things the extension of GIs protection to cover products other than wines and spirit and the establishment of multilateral registration system. US on the other hand deny the need of extending GIs protection as the current legal framework augurs well, and it will be costly to introduce new system of administration internationally.

\(^1\) [http://www.wipo.int/edocs/mdocs/sme/en/wipo_ip_bis_ge_03/wipo_ip_bis_ge_03_3-part3.pdf](http://www.wipo.int/edocs/mdocs/sme/en/wipo_ip_bis_ge_03/wipo_ip_bis_ge_03_3-part3.pdf)

\(^2\) It is to be noted earlier that intellectual property covers a wide range of intangible rights; among others is the Geographical indications which is the case of this thesis.

Currently there are over 160 countries that offer protection to GIs in one form or the other. Some of these countries such as Canada, 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.

**Problem statement**

While trying to examine the importance and contemporary relevance of Geographical Indication in general the researcher would try to highlight and bring the harm and the loss that has been caused to developing countries who are rich in their bio resources. Here the study proposes to highlight the role of the western multinational corporations in taking away the rich bio resources of the Asian and African countries to the west and getting it registered as their property. The thesis would also highlight the helplessness of the poor countries in protecting their property as their own. The proposed study would examine whether the existing laws are adequate? If they are not adequate what should be done to protect, preserve and conserve the precious resources of the south and that of India. What Kind of changes are to be brought about in the prevailing law governing the subject. Here a critical analysis of both the International and National legal regimes especially the conventions adopted by the International community in this area will be looked into.
While examining issues, which are relevant to India, researcher will get hold of first hand information about the laws relating to the subject enacted by the Government of India. Researcher will also try to find out the prevailing lacunas in the legislation or rules regulating Geographical Indication and would make an earnest attempt provide a blue print so that these precious resources identified within the region especially in India are protected and preserved legally.

**Objectives of the study:**

Study is proposed to be carried out to accomplish the following objectives:

1. To examine the prevailing International Conventions which are binding on India in the area of Geographical Indication.
2. To survey the other Rules, protocols and study reports etc, which are adopted by various UN bodies for recognition of Geographical Indications.
3. Find out the special regional rules for protection of Geographical Indications.
4. To make a sincere effort in finding out the applicable Law on GIs in the State of Karnataka and its relevance on the National Law.

The study will ascertain the following:

1. What is the policy and content of Indian IP Legislation Prior to TRIPs and the rational for such direction?
2. Has TRIPs brought in new changes in the existing legislation and are they in tune with emerging needs of business and trade trends?

3. Whether the new act of GI is in compliance with TRIPs provision?

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 is to explore and comprehend the issues pertaining to GIs 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;

**Specific objectives:**

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

2. To explore various existing legal framework for protecting GI in India as well as those applicable through international conventions.

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

4. To explore the possible pros and cons of protecting GIs in India.
5. To examine possible institutional, policy, legal and economic structural reforms and their implications associated with protecting GIs in India.

6. Understand GIs by addressing aspects of value chain governing structure that should be considered in the light of the socio-economic benefits in India with special emphasis on State of Karnataka.

7. Identify some GIs that have been registered in State of Karnataka.

**Thesis Statement and Research Questions:**

In this study, it is argued that, there are abundant potential GIs in India and their protection can result to profound positive economic contribution to the region. Hence, India should opt for the protection of GIs. Most of the potential GIs found in India are agricultural and Handicraft products of which their production cost are less than EU's GI, because of comparative advantage in agricultural production. Meanwhile, structural reform costs on policy, institutional and legal framework for GIs protection in India are less than the perceived advantages of protecting them.

The following research questions were used for argument construction of the thesis statement as well as attempting the research problem.

1. What is the existing legal framework for GIs protection at multilateral, regional, and national levels?
2. Are the existing Indian Policy and legal frameworks feasible for protecting GIs?

3. What is the economic rationale for GIs protection in India and the conditions necessary for protecting them?

For the economic and statistical analysis substantive questions will be useful such as:

- What is the market size for the product noting it’s local, national, and Global dimension?
- What are the special product characteristics?
- How should these characteristics be codified and at what stages along the distribution chain should they be regulated?
- What product promotion strategies should be adopted and in which market?
- What are the hurdles in actualizing the potential available in GI protection? Here, the analysis should consider issues concerning distribution chain and how relevant groups might respond to codification of product characteristics? These are pertinent in assessing the potential economic value of GIs.
- What are the burdens and costs associated with protecting indication of other member countries? How will this impact on the National/Local economy.
These substantive questions will be useful for economic and statistical evidence on the subject and help the member countries in their ongoing negotiation.

4. What are the probable positive and negative impacts of GIs protection in India?

5. Which position should India adopt?

**Hypothesis**

Hypothesis formulated by Researcher

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

2. GI has both positive and negative impact

3. GI requires efficient monitoring and implementation systems.

4. An effective system of legal and institutional structure Karnataka would benefit the producers the protected GI products and have a larger socio-economic impact.

**Significance of the Research**

This study has tremendous significance economically, legally and socially to India and EU as well as in the world of academia. The research reveals the available potential GIs and the economic rationale of protecting them in India and the possible structural reforms required for implementation as well as the possible economic, policy, legal and social constraints associated with such changes.
The study further poses an opportunity for academics to make analysis on the relevance of GIs contribution in the Indian context. As, most of the researches have been conducted in the EU context and other parts of the world such as USA etc. Furthermore, the study affords the forum for debates to stakeholders on whether the protection of GIs should be extended or not at multilateral level as well as regional level, in Indian context taking into mind the offensive and defensive interest of India.

**Preliminary Literature Review**

Despite the fact that GIs are perceived to be a new category of Intellectual Property rights, several scholarly literature exist addressing the nature, purpose and legalistic character of this type. Some studies have focused on specific products while others have explored a more general understanding GI and the issues therein. Among the numerous studies on GI the following have been highlighted as previous studies in this field of light of why this researcher chose to carry out this study:
Commentators like Hughes, J, J Flodgren appreciate the fact that GIIs and Trademarks resemble, especially on the purpose of identify particular goods from others of similar type, due to such resemblances in terms of their roles, two groups have emerged internationally regarding the system of protection as to which should be adopted over the other. The first group includes those who consider GIIs as a mechanism for protectionism and unfair competition in the market. This group considers trademarks as enough intangible rights that can serve the purpose GIIs is perceived to be serving.

According to D Kastur and Carbolic, Trademarks serves almost the same purpose served by the GIIs, however, one can not deny the fact that GIIs does something more than what trademarks does. For instance the trademark law commands that any mark must be distinctive in nature in order to qualify for registration. However most of the GIIs are descriptive marks representing geographical names of the regions where products comes from: hence, they can not be protected under the trademark law. According to carbolic- GIIs protects collective rights of the regions whilst trademarks protect individual rights, sui generis system seem to accommodate well the need of protecting GIIs, even

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4 “The spirited debate over Geographical indications” [2003] 10 European Economic Law Journal 47,
7 “Expanding the protection of geographical indications of origin under Trips. old” debate or “new” opportunity?”
though GIs are as well protected under trademark system as collective, certification or guarantee marks.

Authors like, H.V. Chandola and Carboli, According to Chandola, among the other contentious issues in the Doha Negotiations is the protection of GIs. It is the debate led by two economic giant blocs in the world, US on the one hand and EU on the other. The EU argues that, the protection afforded to wines and spirits should also be extended to other categories of products qualifying as GIs in the WTO TRIPS law. In addition according to Carbolic, EU advocates the need of having a multilateral registration system for protected GIs. On the other hand, . On the other hand, US claim that the protection afforded to GIs other than wine s and spirits via trademarks laws are feasible. Also, the need of having multilateral registration system is unnecessary, as this will increase unwelcome administrative costs that might not be affordable by developing and LDCs.

The ongoing debate reflects the facts prevailed during the negotiations resulted the TRIPS agreement. The legal basis of the debate falls within the TRIPS provisions that seem to be ambiguous in terms of interpretation, hence,

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8 “Basmati rice: Geographical Indication or mis-indication” 9 The Journal of World Intellectual Property,
9 “Expanding the protection of geographical indications of origin under Trips. “Old” debate or “new” opportunity?”
10 Least developed countries
warranting both sides to take advantage of the ambiguities. It is unfortunate that neither the panel nor the appellate body had an opportunity to interpret the relevant provision under debate. Article 24, which attracts further negotiations amongst members, is at the core of the debate\textsuperscript{11}.

Article 24 provides a basis for future negotiations. The reference in the first sentence to ‘individual GIs’ suggests that Members intended to address indications on an identifier-by-identifier basis, as opposed to a product class-by-product class basis. It would be difficult to construe the term ‘individual GIs’ as referring to something other than particular names suggesting territories.

According to Dr. Dwijen Rangnekar\textsuperscript{12} points out that the interpretation of this provision has nevertheless been the source of considerable controversy in the TRIPS councils. Delegations contest on the question whether Art: 24.1 is limited to GIs for wines and spirits, or whether it authorizes negotiations for extension of protection of goods other than wines and spirits. Members opposing such extension argue that the terms ‘individual GIs under Article 23’, relate exclusively to the goods covered by Article 23.

\textsuperscript{11} Art 24.1 provides that; ‘Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Art 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context note that the scope of these negotiations was later extended to cover also spirits of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations’.

\textsuperscript{12} [*Geographical Indications a review of proposals at the TRIPS council extending Article 23 to products other than Wines and Spirits*, [UNCTAD, Geneva 2003,]]
Members calling for extension claim that, provisions of Article 24.1 are of general application to all products and the reference to article 23 does not relate to products contained therein but to a means of additional protection to be provided\textsuperscript{13}. To support their view, member refers Article 24.2 which authorizes the TRIPS Council to keep under review the application of GIs provision.

With respect to this mandated review, the TRIPS council reported to the 1996 Singapore Ministerial that inputs from delegations on the issue of scope should be permitted. The supporters of extension consider this reference by the TRIPS council to the ‘scope’. So far, this interpretative issue has not been settled\textsuperscript{14}.

On the issue of economic contribution of GIs, commentators admit the role done by GIs on market differentiation hence adding value to the products\textsuperscript{15}. However, many researches evaluating benefits and economic rational of protecting GIs were done outside India. Insignificant empirical researches were done in the Indian context. Moreover those conducted for India, aimed at which position India should join at the Multilateral debate in the ongoing Doha negotiations\textsuperscript{16}.

\textsuperscript{13} See the communication fro Bulgaria, Czech Republic, Egypt, Iceland, India, Liechtenstein, Pakistan, Slovenia, Sri lank, Switzerland and Turkey [IP/C/W/204,Para 12]
\textsuperscript{14} Dr.Dwijen Rangnekar ‘Geographical Indications a review of proposals at the TRIPS council extending Article 23 to products other than Wines and Spirits’, [UNCTAD, Geneva 2003,] page 45.
\textsuperscript{15} World Intellectual property organization [2003], ‘international framework for the protection of trademarks and geographical indications’ International Bureau of WIPO, WIPO/TM/BEY/03/1, [WIPO, 2003B]
\textsuperscript{16} Kasturi, D ‘Select issues and debates around geographical indications with particular reference to India’ [2008] 42 Journal of World Trade 461-507
Despite the fact that there are several potential GIs in the India, and Indian position internationally is not clear, it follows therefore that, denying or rushing into protecting GIs without analyzing possible economic contribution and other associate implication to the region seem to be unfounded decision.

Therefore following such lacuna, it is the thrust of this study to fill the existing gap by conducting a study that will examine the availability of potential GIs in the region, and the possible economic contribution of such GIs\(^\text{17}\), the legal frameworks in the region if augurs well the quest of protecting GIs and the possible implications of introducing structural reforms.

**Research Methodology**

The study was explorative in nature, coupled with desk and library based research. Comparative approach was adopted especially while borrowing the experience of projecting GIs by various EU and US. Although the study is legalistic based, the research problem as well as the objectives of the research necessitated the investigation of different economic concepts and theories underlying the protection of GIs.

\(^{17}\) However economic analysis undertaken by the study involves economic theories which are theoretical based but coupled with some empirical evidence depending on the availability of data in the region.
Additionally, internet based research has been employed significantly, in looking information from different secondary sources such as text books, relevant journal articles, study report on GIs etc. Also, relevant legislation or treaties responsible for GIs protection were looked upon. Qualitative analysis is the method used to analyse data.

**Chapter overview**

Chapter one is an introductory chapter covering background to the study, problem statement, thesis statement and research question, significance and objectives of the study, hypothesis, literature review, methodology and limitations of the study.

In Chapter two meaning of the term GI and also examines the prevailing scenario concerning the international protection of Geographical Indications as provided in the bilateral and multilateral agreements concluded before the coming into force of the TRIPS agreement.

Chapter three addresses the economic rationale and associated benefits of protecting GIs, and the requisite conditions needed for a product to qualify GI registration.
Chapter four addresses the National Protection of GIs and the importance of such protection. The contrasting views of the United States [US], European Union [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 is discussed in the light of the Indian Law on GI protection.

Chapter five addresses potential GIs found in India elucidating economic benefits accrued from protecting GIs, followed by discussion on social benefits. This chapter looks socio-economic relation with some potential Geographical Indications - A Case analysis, its experience with GIs protection, its impact of GIs registrations.

Chapter Six addresses the potential of GI in State of Karnataka, policies and legal frame works available to administer such potential GIs.

Chapter Seven covers general conclusion for various findings observed by the study and provides recommendations as to which position should India opt. reasons for the same and also addresses possible areas for future research.

**Purpose and limitation of the study**

The purpose of this study is to make an economic evaluation of the impact of Indian GIs on their respective regions of production. All Juridical aspects of the
topic will be ignored, and hence, after having concluded whether or not GIs have the potential to contribute economic development, I will consider the genesis of GIs and understand them in the international context. The study of IP is significantly voluminous and therefore other 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.