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Sulok S K

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Concept of Collective Ownership under the Indian Geographical Indications Act

SULOK S K¹

Abstract – The recent Basmati Rice controversy has brought the subject matter of Geographical Indications to the limelight once again in India. It puts forth the pertinent question of; who are the real owners of GI and whether India has any legal clarity about the ownership notion. It has led to my research paper attempting to unearth the legal notion of collective ownership in GI and whether it is adequately conceptualised in the Indian scenario.

The research has led to the understanding that the concept of collective ownership in GI in the Indian scenario is not adequately conceptualised. The history of the legal protection of GI traces back to the Pre-TRIPS period, wherein it was narrow in scope. In the Post-TRIPS scenario, the sui-generis legislation was adopted under the TRIPS mandate. There is a lack of legislative clarity on the concept, and the judicial contribution remains minimal. The case studies conducted reveal the lacunas when the concept is implemented on the ground, necessitating a proper legal articulation of collective ownership in the Indian scenario so that the real owners of GI are identified and protected.

Keywords – Geographical Indications, Geographical Indications Act, Collective Ownership, TRIPS Agreement.

INTRODUCTION

With more than 350 Geographical Indications (GI) registrations and the recent Basmati Rice controversy, the subject matter of geographical indications is attracting more attention than ever before in India. The ongoing Basmati Rice controversy in which the State of Madhya Pradesh has knocked on the doors of the Apex court of India for the inclusion of its regions under the Basmati producing areas begs one pertinent question; who are the real owners of GIs? And why is it that nearly two decades after the first application for registration of Basmati was filed in the GI Registry, the ownership issues remain unresolved?

It brings attention to the fact that the concept of ownership in GI is collective, as opposed to patent or copyright, which are generally individualistic, making it complicated as multiple parties are involved. Understanding the complexities involved in articulating the concept of collective ownership in the Indian scenario is thus essential to ensure that the real owners of GI are identified and protected.

The main objective of this study is to unearth the concept of collective ownership of geographical indications and to understand whether it has been adequately conceptualised in the Indian scenario?

A literature review conducted highlights similar concerns being raised. In their study, Nitya Nanda and Indrani Barpujari et al. (2013) have pointed out the ambiguities in the 'producer' definition under the GI Act and the lack of adequate consultative process with stakeholders during GI registration.

Yogesh Pai and Tania Singla (2016) identify the problems of lack of collective action by producers when competing with other products and throw light on the inability of Indian GI stakeholders to take action against infringing goods. In their study, Akanksha Jumde and Nishant Kumar (2020) highlight the anomaly of the authorised user concept under the GI Act and the need for legislative intervention.

The above studies point toward the lacunas in the collective ownership relationship (of which registered proprietors, authorised users and producers form part) in the Indian scenario and the need for further enquiry into it.

Part I of this study gives introductory remarks on collective ownership and a brief overview of India's articulation of collective ownership during the Pre-TRIPS period. Part II deals with how the TRIPS Agreement handled the concept and India's obligations under the Agreement. In Part III, the Geographical Indications Bill, the Bill introduced for domestic implementation of the TRIPS obligations relating to GI, is explored to comprehend the legislative intent behind the concept of collective ownership envisaged. Part IV discusses the notion's present understanding under the Geographical Indications Act, the Geographical Indications Rules and the Manual of Geographical Indications. Part V looks at the judicial contribution to the concept. Part VI deals with four case studies (GIs in Kerala) to appreciate the gap between the collective ownership notion envisaged and the ground reality. Finally, Part VII concludes with the research findings, the lacunas in the Indian scenario and suggestions to remedy the same.

The study comprises of two parts; a theoretical and an empirical component. The theoretical component comprises of unearthing the concept of ownership in GI in the Indian scenario and identifying the lacunas thereof. And the empirical component would utilise empirical analysis to comprehend the practical limitations when the ownership concept is implemented on the ground. The empirical analysis is conducted with particular reference to the agriculture and handicrafts goods in the State of Kerala.

¹ SULOK S K, is working as Research Assistant, DPIIT Chair on IPR, Inter University Centre for Intellectual Property Rights Studies (IUCIPRS), Cochin University of Science and Technology (CUSAT), Kerala, India (sk.sulok@gmail.com, sk.sulok@cusat.ac.in).

The methodology used to conduct the empirical study is the case study method. The data was collected with the help of a semi-structured questionnaire from relevant stakeholders. The four case studies conducted are on four registered GIs, namely Pokkali Rice, Nilambur teak (Agriculture goods) and, Aranmula Kannadi, Alleppey Coir (Handicraft goods). Within each case study, responses from all the relevant stakeholders (Registered proprietors, Authorised Users and producers) were obtained.

The major findings of the research are; that India has a long history of providing legal remedies to protect GI goods which extends to the Pre-TRIPS period. During the Pre-TRIPS era, both statutory and common law protections were available for GIs. It provided remedies to not only GI owners but also consumers and other stakeholders. Nevertheless, both the laws remained underutilised. So the concept of collective ownership articulated remained narrow in scope. Further, the pre-TRIPS history suggests that the Indian GI owners were not so keen on actively asserting their rights/ defending GIs against usurpation. It was the reason why only one GI was registered, that is Darjeeling tea.

The TRIPS Agreement represented a fundamental shift in the GI protection in India. The Agreement does not explicitly mention collective ownership but implicitly recognises GI as collective property. The countries have the full flexibility to contemplate collective ownership; nevertheless, the TRIPS negotiating history give some guidance from which India can gain useful cues. Further, India is fully TRIPS compliant with respect to its obligations as far as GI is concerned.

To implement the TRIPS obligations, the GI Bill was introduced in Parliament in 1999. The debates on the GI bill reflect the lack of understanding of the legislature of the subject matter at hand. The fact that India already had a long history of protecting GI during the Pre-TRIPS period and had registered Darjeeling tea as a certification mark was not reflected adequately in the parliamentary debates. No proper study was conducted to understand the pre-TRIPS scenario of GI in India and how the collective ownership in GI existed on the ground. Further, no serious scrutiny on how to implement the TRIPS obligations that best suit our domestic interest seems to be undertaken. Thus the policy objective of the discussions remained narrow in scope.

The narrow policy objectives as seen in the Bill also has got reflected under the Act. In articulating the collective ownership of the GI, the following concepts become crucial, namely 'producer', 'authorised user' and 'registered proprietor'. Multiple reasons prompt one to argue that the collective ownership notion is not adequately envisaged in the Indian scenario. Some of them are; i) no proper procedure for identifying actual owners of the GI, ii) the eligi-

bility, role and responsibilities of a registered proprietor are not adequately envisaged, and iii) no mechanism to monitor changes in collective ownership relationship over time.

The judicial contribution to the exposition of the concept remains minimal. The case studies reveal the lacunas when the concept is implemented on the ground.

The four case studies conducted highlight that the GI's ground realities are different from those portrayed in the GI application. Some of them are the changes in the production process, the lack of uniformity in following the production process, and the development of fractions within the societies. The changes happening in the collective ownership relationship on the ground over time are not adequately monitored or reflected in the GI application. If allowed to be continued, the trend could have a disastrous impact on the GI. The lacunas identified in the law are the main reason for the situation on the ground.

The research findings necessitate immediate legislative intervention for a proper articulation of collective ownership in the Indian scenario.

In light of other studies, my research goes a step further in understanding the implementation issues to which the solution lies in formulating proper guidelines. The study highlights the need for legislative intervention to clarify the concept of collective ownership in the Indian scenario. It can help in providing better guidance to courts, GI examiners and other stakeholders.

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