



# Protecting and promoting traditional knowledge in India

## What role for geographical indications?

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## About the author

Ruchi Pant is a development professional and practitioner working on matters related to biodiversity conservation, natural resources management, rural livelihoods, public policy and decentralised governance. She has worked for several years on customary laws and legal pluralism pertaining to natural resource management in India and Nepal, especially in the Himalayan states inhabited by tribal communities. Email: ruchipant4@gmail.com

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*Ruchi Pant, April 2015*

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Geographical indications (GIs) can help communities promote and protect markets for their biocultural products, and are gaining popularity globally as a tool for the protection and promotion of traditional knowledge. GIs specify the geographical origin of a product and link it with its essential qualities that are due to its place of origin. There are almost 200 registered biocultural products originating in India, covering a range of products from agricultural, handicrafts, manufactured goods, textiles and food stuff. This Working Paper outlines five case studies in India and seeks to explore the hypothesis that GIs can protect traditional knowledge and biocultural heritage.

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# Acronyms

APEDA	Agricultural and Processed Food Products Export Development Authority
BMC	Biodiversity Management Committee
CBD	Convention on Biological Diversity
DUS	Distinctness, Uniformity and Stability
GATT	General Agreement on Tariffs and Trade
GI	Geographical indication
INR	Indian Rupee
IP	Intellectual property
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual Property Right
NBA	National Biodiversity Authority
PBR	People's Biodiversity Register
PVFR	Plant Varieties and Farmers' Rights
PVP	Plant Variety Protection
SBB	State Biodiversity Board
TK	Traditional knowledge
TKDL	Traditional Knowledge Digital Library
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

# Executive summary

This paper explores the opportunities and challenges associated with the use of geographical indications (GIs) to promote biocultural products in the market. Biocultural products are produced using traditional knowledge (TK). They are typically unique to a geographical area and are derived from the particular biological resources, traditional knowledge and cultural values and practices associated with the landscape – which make up the 'biocultural heritage' of indigenous peoples and local communities.

India is a biologically and culturally diverse country which covers ten biogeographic zones, and there is a rich source of products emanating from the use of biocultural knowledge of tribal peoples and local communities. These goods offer the potential for reducing poverty and strengthening local economies, while stemming the erosion of biodiversity, traditional knowledge and culture and strengthening community cohesion.

GIs are an intellectual property right offered by the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property. As a member of the WTO, India is required to enact national GI legislation, which it did in 2003 (the Geographical Indications of Goods (Registration and Protection) Act). This paper reviews the current status of GIs in India, and the social, environmental and economic impacts of these GI registrations. The paper highlights some limitations of the GI Act and GI certification tool through case studies. On the basis of the case studies and detailed discussions with a range of stakeholders, including the officials of the GI Registry, legal experts and the so-called beneficiaries of the GI registered products, recommendations are made to secure success in the use of the GI tool to promote and protect TK and biological resources.

The case studies include Darjeeling Tea, Navara Rice, Basmati Rice, Feni and Kota Doria sarees. The effectiveness of these GIs in protecting markets and

generating economic revenues for communities was explored, as well as their role in incentivising the use of traditional knowledge and the conservation of biodiversity. The case of Darjeeling Tea shows that GIs can be effective in protecting markets for established products when funding is available for monitoring and legal action. The government-controlled Tea Board has invested this funding to support domestic and export markets for the tea industry. However, the role of local communities is restricted to their employment as farm labourers, and they have received limited benefits from GI.

In the case of Navara rice, a small scale farmer managed to establish an association of farmers growing this rice and registered a GI with his own and borrowed funds, in order to revive this threatened traditional variety of rice which has medicinal properties. Despite investments in marketing, this GI has not yet yielded results, since the cost of producing this variety are high and the profit margins are low, and because the Ayurvedic drug industry, which sells Navara rice oil, is not purchasing Navara rice from the GI-registered producers. Hence further research and action is required to prevent passing off (ie. dishonest claims of product origin).

The case of Basmati rice, where a GI application has been pending for over six years, shows the obstacles that can occur when registration of a well-established product is contested by growers in other areas not covered by the proposed GI in both India and Pakistan. This has delayed GI protection for thousands of small producers of Basmati rice.

Feni is an alcoholic drink introduced into Goa by the Portuguese in the 16<sup>th</sup> century. A GI has been obtained by the Feni Distillers and Bottlers Association in Goa. However, questions remain over whether Feni producers in neighbouring states can be included in the GI, and while a certain level of standardisation is required for a GI to maintain its quality, this could adversely affect the diverse cultural practices associated with production.

Finally the case of the Kota Doria sarees shows the potential of GIs for revitalising traditional production practices, while highlighting the dangers of benefit capture by the more powerful actors in producer communities and households. It also shows the vital supporting role that international and local agencies for trade and development can play in enabling small producers to benefit from GIs.

This study suggests that GIs may be suitable for protecting unique biocultural products which are produced using collectively-held traditional knowledge and linked to particular cultural practices and geographical areas. GIs could help traditional producers capture the full economic benefits from their biocultural products, rather than waiting for possible benefit-sharing. The case of Kota Doria sarees shows that GIs can promote traditional production practices, which suggests that they could also revitalise production of traditional crops and livestock breeds. However, GI registration and enforcement poses significant financial and bureaucratic challenges for small-scale producers. Hence it may be best to first establish a market for these products, and only seek GIs for established products which are likely to benefit most. It appears from this study that the government of India has provided particular support for industry and large-scale products for GI registration and enforcement.

To realise the potential of GIs as a tool to protect and revitalise biocultural heritage, greater support is needed from the government of India, state agencies, donors and NGOs, to enable traditional producers to assess and enhance the markets for their products, establish representative associations, apply for GIs and monitor and enforce them. While no GI has yet been granted for 'natural plants' (eg from forests), experience in India suggests that sustainable harvesting practices will be needed to ensure that biodiversity resources do not become threatened by over-exploitation once GIs are granted.

## 1

# Introduction: Protection of traditional knowledge and geographical indications

Traditional knowledge, innovations and practices play an important role in practically all aspects of the lives and livelihoods of rural people in India: food and agriculture, human and animal health, clothing, shelter, architecture, art, culture, handicrafts, natural resource management, etc. (Sahai *et al.* 2005). Traditional knowledge is an inextricable part of the biocultural heritage<sup>1</sup> of indigenous peoples and local communities. It is 'traditional' only to the extent that its creation and use are rooted in the cultural norms and practices of a community; it does not necessarily mean ancient or static. Indeed, that which is 'traditional' can be seen as dynamic and evolving (Gervais 2008). Traditional knowledge is generally held collectively (Nair and Kumar 2005).

The use of traditional knowledge (TK) related to biological resources is not restricted to the lives and livelihoods of agrarian, rural and indigenous societies. In the modern day, there is an ever-growing demand for natural, herbal and organic products globally, especially in urban markets. The herbal medicine, cosmetics and personal care industries are the major users of these resources. The increased market demand for biological resources and associated TK could offer new opportunities for generating benefits and enhanced incomes for indigenous and local people. However, the current reality seems to be quite far from achieving this. There are very few experiences globally of local communities or traditional knowledge holders gaining substantially from the commercial use of their knowledge. On the contrary, cases of biopiracy and misappropriation of traditional knowledge are becoming

<sup>1</sup> The following definition of 'Biocultural Heritage' was included in a guidance document prepared by the Secretariat of the Biodiversity Convention: "The knowledge, innovations, practices of Indigenous and local communities which are often collectively held and inextricably linked to traditional resources and lands and waters traditionally occupied and used by indigenous and local communities; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological context of communities" (UNEP/CBD/WG8J/4/7).

## BOX 1: WHAT IS TRADITIONAL KNOWLEDGE?

Traditional knowledge is important for the conservation and sustainable use of biological diversity. The Convention on Biological Diversity requires country parties to “respect, preserve and maintain the knowledge innovations and practices of indigenous and local communities embodying traditional lifestyles”. Traditional knowledge includes knowledge of sustainable ecosystem management and sustainable agriculture practices which has been empirically tested and refined over generations. Hundreds of crop varieties and livestock breeds have been developed using traditional knowledge. Traditional knowledge and genetic diversity is important for food security and adaptation to climate change, as recognised by the IPCC’s 4<sup>th</sup> and 5<sup>th</sup> Assessment Reports. TK is also crucial for the survival of indigenous peoples and is central to their cultural identity and spiritual beliefs. Traditional knowledge is disappearing fast – an estimated 50–90 per cent of all languages (which are an indicator of TK) will have disappeared by 2100 (UNESCO 2003).

more apparent and have been on the rise in the last two decades (Bhattacharya 2014). This is also because more biopiracy cases have been highlighted since the Convention on Biological Diversity (CBD) was signed, and since national legislation has been introduced in member countries.

One of the primary reasons for this misappropriation is that traditional knowledge is available freely from local communities and these knowledge holders are not aware of the need to protect their intellectual property rights. The fact that this knowledge is often spread across several families and communities covering a large geographical area and sometimes even across country borders, makes protection even more challenging and misappropriation easier and more likely to occur. Misappropriation is exacerbated by the lack of effective tools for protecting the intellectual property of the holders of traditional knowledge and ensuring that they receive benefits from the commercial use of their knowledge. This is discussed further in the chapter on legal tools for protecting TK in India.

Although the Convention on Biological Diversity (1992) and Nagoya Protocol (2010) require commercial users of genetic resources and traditional knowledge to share the benefits they derive fairly and equitably, these agreements only cover resources collected after the entry into force of the CBD and the Nagoya Protocol, and do not recognise rights over traditional knowledge that is already published or ‘in the public domain’. So rather than waiting for possible ‘benefit-sharing’ by others, communities stand to gain a lot more by selling biocultural products themselves, for full ‘benefit capture’.

Geographical indications can help communities to promote and protect markets for their biocultural products, and are gaining popularity globally as a tool for the protection and promotion of traditional knowledge.<sup>2</sup> A geographical indication is an indication or a sign which specifies the geographical origin of the product and links it with its essential qualities that are due to its place of origin. For instance, an agricultural product, such as Allahabad *Surkha* (a unique and popular variety of guava found in the Allahabad region of Uttar Pradesh in India) has a special flavour and its core is red in colour. This is where the variety gets its name – ‘surkha’ meaning red. This variety gets its unique qualities from the areas where it is grown and special characteristics like temperature, humidity, soil, water, etc. associated with this particular geography.

Products marketed using a GI label have benefited a range of producers, so far particularly in developed countries, mainly in Europe. Well known examples of GIs include Champagne, Scotch whisky, Feta cheese, Harris tweed. Products made by local people, such as handicrafts, textiles, traditional foods and medicine, using local resources and traditional knowledge may qualify for registration as geographical indications. Where products have acquired goodwill by dint of their origins, an official indication of this origin by a GI (and therefore associations with a particular quality) can add or maintain market value in terms of premium prices or prices that are not available to similar competing products that are not distinguished by their source. Furthermore, given that some biocultural products have huge commercial potential, it is important to protect them from freeriders and from the threat of unfair business practices.

<sup>2</sup> According to Article 22 (1) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), “Geographical indications are ... indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. ([www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf))



A GI can also be a more appropriate tool for the protection of TK than other IPR tools as both GIs and TK are location-specific and are associated or emanate from a culture and traditions of a community or a region (Nair and Kumar 2005). GI affords collective rights and thus is more suited to protection and promotion of TK than most intellectual property rights, since TK is largely held collectively (Pant 2008: 14).

There are two kinds of losses of TK which have become clear in recent years, and this means that two kinds of protection and promotion frameworks are required: protection against misappropriation and biopiracy; and protection to reverse the decline and loss of TK (Pant 2008). Though GIs do not protect TK directly, the tool can be used to protect knowledge indirectly by preventing others from unfairly profiting from a community's TK; and by placing value on the TK embedded in goods. Branding and promotion of these products with unique qualities can increase demand for such products and thus revitalise traditional production practices and knowledge.

GI registration of biocultural products can also help conserve biodiversity. If products made out of biological resources obtain a GI and as a result sell at a premium or gain better market access, this could incentivise local people to collect sustainably from the wild, commence/continue farming traditional crops or livestock breeds, or experiment with the cultivation of species that are only found in the wild. A GI can also help enhance agro-biodiversity by fostering pride among the local producers. It may serve as a way of recognising and honouring the local community who preserved and improved the local variety or varietal product which has become popular for its special characteristic or quality.

## 2

# Objectives and approach

This paper seeks to explore the hypothesis that GIs can protect TK and biocultural heritage in India. India has a rich heritage of biocultural products.<sup>3</sup> The GI Registry has registered nearly 200 such products originating in India covering a range of products from agricultural, handicrafts, manufactured goods, textiles and food stuff. The paper explores a number of cases of products that are seeking or have received GI status in India. These case studies are used to understand the current – and possible future – impact of obtaining GI status on the wellbeing of the knowledge holders and the sustainability of their production systems. They include Darjeeling tea, Navara rice, Basmati rice, Feni, and Kota Doria sarees. While the first three are ‘agricultural goods’, the fourth is an alcoholic beverage and the fifth is a traditional garment which falls under the GI category of handicraft. Basmati rice is in the process of seeking GI registration. This case has been included in order to explore the challenges faced in the process of registration. Experiences from other GI cases in India are included in the last two chapters of this report which review the lessons and ways forward.

The specific questions explored in this research include: Can GI registration of a biocultural product increase its economic value and get better access to markets? Can

GI registration provide an incentive to the knowledge holder to continue to produce or manufacture the product and to sustain the traditional knowledge and biodiversity resources on which the product is based? Will a GI suffice in delivering benefits to local communities or will countries have to adopt additional strategies to facilitate local people to accrue higher and more sustained benefits?

This paper ultimately aims to ascertain the effectiveness of GI as a tool to encourage knowledge holders to continue to use and apply their knowledge, ultimately leading to the protection of the knowledge and conservation of raw materials – the biological resources. The paper is based on a review of existing literature, and face-to-face interviews with a number of officials from the GI Registry office, government representatives, organisations that have applied for GIs and producer groups. The research was conducted between 2010 and 2014 in the Indian states of Kerala, Tamil Nadu, Uttarakhand and West Bengal. The paper provides a number of recommendations for policymakers, practitioners and other key stakeholders on their role in promoting GI and enhancing the market base for biocultural products.

<sup>3</sup> Products based on biocultural heritage have characteristics specific to each particular mix of local biodiversity and culture of an indigenous people or traditional society. These peoples and societies comprise communities living close to the land whose livelihoods are *relatively* unaffected by industrialisation and the mechanical and chemical outputs of modern industry. Products based on biocultural heritage include, but are not necessarily limited to:

- traditional crop varieties, and products harvested or processed from them
- processed foods and beverages
- traditional medicines
- handicrafts and other manufactured goods made partly or wholly from natural products. (Dutfield, 2011)

For further information on biocultural heritage, see [www.bioculturalheritage.org](http://www.bioculturalheritage.org)

## 3

# Legal tools for protecting traditional knowledge in India: opportunities and gaps

A number of legal tools exist in India and these have the potential to protect traditional knowledge. By understanding these tools first, we can better grasp the possible relevance or role of GIs to fill gaps that might remain in protection. This chapter explores some of the existing tools.

Patents are sometimes cited as tools for protecting rights over traditional knowledge, but they do not suit the specific needs and characteristics of most traditional knowledge holders. Patents largely protect knowledge which emerges from modern technological enquiry (Cullet 2005: 287). This is because the main criteria for patent protection are novelty and an 'inventive step'. However, knowledge pertaining to medicinal plants and crops is often dynamic in nature and evolving over time and generations, and is largely held collectively. TK holders therefore may not be able to prove which inventive steps have been taken and when. Much TK is already available in the public domain which makes it ineligible for protection. Furthermore patents focus narrowly on commercial goals, without also supporting traditional practices or values.

India's Biological Diversity Act of 2002 is a more recent law that has been enacted to provide for the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and traditional knowledge. This law establishes a three-tier institutional structure for biodiversity governance in the country. One of the primary functions of the third tier, the Biodiversity Management Committees (BMCs), is documentation of biological diversity including habitats, landraces, folk varieties and cultivars, domesticated stocks and breeds of animals and micro-organisms, and knowledge relating to biological diversity. The other two tiers, the National Biodiversity Authority (NBA) and the State Biodiversity Boards (SBBs) are mandated to consult these BMCs when taking any decision relating to the use of biological resources and associated traditional knowledge within the territorial jurisdiction of the BMCs. The Biological Diversity Rules, 2004, specify that the main function of the BMC is to prepare a People's Biodiversity Register (PBR) in consultation with local people. The register shall contain

comprehensive information on the availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them. The NBA/SBBs shall specify the form of the PBRs, the information it shall contain and the format for an electronic database. The BMC is also expected to maintain a register with details on access to biological resources and traditional knowledge granted, collection fees imposed, benefits derived and the mode of benefit-sharing.

While the Biodiversity Act has progressive provisions to protect and promote traditional knowledge, these have yet to translate into real benefits to traditional knowledge holders and local communities. At present, the efforts being made in the country are more in terms of documenting knowledge in the form of PBRs.

Another national law which has the potential to protect and promote farmers' traditional knowledge and innovations is the Protection for Plant Varieties and Farmers' Rights (PVFR) Act, 2001. The act recognises the farmer not merely as a cultivator, but also as a conservator of the agricultural gene pool and a breeder who has successfully bred several varieties (Sahai 2003:59). The act makes provisions for such farmers' varieties to be registered (Section 14c, PVFR Act) either by the farmer or by an association of farmers (Section 16(d), PVP Act, 2001) or by any person authorised by the farmers to make an application on their behalf (Section 16E, PVFR Act 2001). The act recognises the age-old practice and rights of the farmer to save, use, sow, exchange, share or sell their farm produce including seed of a variety protected under the act. Earlier this act was of limited use to the farmers as the registration process enshrined in it was too cumbersome for the farmers – particularly when proving the Distinctness, Uniformity and Stability (DUS) criteria required, as it took several seasons of consistent observations and documentation in the farmers' fields.

However, over the past seven years, the Protection for Plant Varieties and Farmers' Rights Authority has simplified the process and has identified Regional Agricultural Universities and crop-specific centres of the Indian Council of Agricultural Research to facilitate this process. As a result, the number of applications for registration has increased significantly. Since

2007, over 2,697 applications for rice have been filed on behalf of farmers, of which 25 varieties of rice have been registered by the PVFR Authority to date. Though this registration process is expected to afford substantive protection to the TK of farmers to protect it from misappropriation, the extent to which the farmers have benefited economically is yet to be ascertained. Furthermore, the act only protects rights over seeds and not over other TK-based products.

The Convention on Biological Diversity<sup>4</sup> and the recently adopted Nagoya Protocol on Access to Genetic Resources and Benefit-sharing<sup>5</sup> are legal tools that have an international mandate to ensure respect and protection of the TK of local communities. The Nagoya Protocol was ratified and entered into force in October 2014. However, member countries will have to incorporate the provisions related to the Nagoya Protocol into their national legislation to operationalise the protocol. The fact that the Nagoya Protocol only covers TK which is documented/collected after its entry into force, leaves much TK unprotected.

Despite these international agreements, there have been a number of cases of biopiracy involving plants grown in India (often those with medicinal properties). Among the well-known cases are neem, turmeric, *Phyllanthus amarus*, etc., where patent offices in northern countries had wrongly granted patents on products or applications derived from the traditional knowledge of local communities. In some cases, the government of India took the lead and litigated against these cases and succeeded in getting the patents revoked. But it is a tedious, time-consuming and expensive process to gather evidence and prove prior art (i.e. prior existence of the product), and show that the knowledge has been in the public domain, in some cases from antiquity, and is therefore not novel. One reason for the wrongful granting of patents also relates to the fact that patent examiners do not have sufficient access to prior art information about the TK of biodiversity-rich countries. To overcome this shortcoming, the government of India has established a Traditional Knowledge Digital Library (TKDL) which involves the documentation of the traditional knowledge available in the public domain in existing literature related to Ayurveda, Siddha, Unani and Yoga in a digitised format in five international

<sup>4</sup> Article 8(j) of the Convention on Biological Diversity requires States to "respect, preserve, and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".

<sup>5</sup> Article 7 of the Nagoya Protocol to the Convention on Biological Diversity states that "parties shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established".

languages – English, German, French, Japanese and Spanish.<sup>6</sup> This helps patent examiners at International Patent Offices carry out searches on prior art and avoid the chances of wrongfully granting patents.

The legal tools outlined above may help to protect traditional knowledge in some cases but, given their reliance on benefit-sharing by others, it could take time to ensure benefits reach the knowledge holders, especially in tribal and traditional communities in India. Furthermore, their limited scope leaves much TK unprotected. These communities stand to benefit far more from marketing their biocultural products themselves for full benefit capture, though they require appropriate legal tools and competent institutions to facilitate this and to offer sufficient protection. The next chapter analyses GI legislation in India, before exploring its potential as a tool for protecting biocultural heritage.

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<sup>6</sup>The Project TKDL was started in 2001. It is a collaborative project between the Council of Scientific and Industrial Research (CSIR), Ministry of Science and Technology and Department of Ayurveda, Yoga, Unani, Siddha and Homoeopathy (AYUSH), Ministry of Health and Family Welfare. It comprises an interdisciplinary team of experts in the various Indian systems of medicine, and scientists and technical officers involved in creating the TKDL. [www.tkdl.res.in](http://www.tkdl.res.in)

## 4

# India's legislation on geographical indications

Geographical indications are a unique form of intellectual property, quite unlike patents and copyright. GIs are a sign or indication used on goods or produce that have a specific geographical origin and possess essential qualities that are due to that place of origin. A GI is generally accorded to a group, association, a collective or a community occupying a particular geographic location. It can be a name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.<sup>7</sup>

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organisation (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulations as applied to nationals of other WTO members. It was negotiated at the end of the Uruguay round of the General Agreement on Tariffs and Trade (GATT) in 1994. TRIPS stipulates that WTO members have to meet certain minimum standards of IPR protection. Members are, however, free to use more stringent protection provided such protection does not contravene the provisions of the agreement. Member countries decide themselves on the most appropriate method of implementation and level of protection to provide in domestic legal systems to meet the terms of the agreement.<sup>8</sup> Section 3 of Part II

of the TRIPS Agreement incorporates provisions related to geographical indications. Article 24.9 relieves WTO members from any obligation to protect a GI which (i) is not protected in its country of origin, or (ii) ceases to be protected in that country, or, (iii) has fallen into disuse in that country.

The TRIPS Agreement makes it mandatory for WTO member countries to provide legal means to prevent deceptive or other improper behaviour in the market concerning the stated geographical origin of goods. For a product to be GI protected in another country, it needs to be first GI registered in its own country of origin (Article 24.9, TRIPS). Bringing GI into the fold of TRIPS gives it a special recognition as a form of protection of intellectual property recognised under the WTO's global trade regime, and makes it a potential tool of economic development for poor and marginalised populations who are often the last to benefit from national economic growth (Nair and Kumar 2005).

India has fulfilled its international obligation under TRIPS by enacting the Geographical Indications of Goods (Registration and Protection) Act 1999 (hereinafter the GI Act). The GI Act in India came into force in September 2003 once the GI rules were declared in 2002. The GI Act defines "Geographical indications in relation to goods to mean an indication which identifies

<sup>7</sup> Section 2(g) of the GI Act, 1999.

<sup>8</sup> Article 1.1 of TRIPS.

such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in cases where such goods are manufactured goods, one of the activities of either production or of processing or preparation of the concerned goods should take place in such territory, region or locality".<sup>9</sup>

The act has established a registry,<sup>10</sup> known as the GI Registry, to facilitate the registration of geographical indications. According to the law, the register includes a list of all geographical indications registered in India with the names, addresses and descriptions of the proprietors and authorised users.<sup>11</sup> According to the GI Act, any association of persons or producers or any organisation or authority legally established to represent the interest of the producers of the concerned goods, can apply in writing to the registrar (in a form and manner, and at a cost, required by the law) for the registration of the geographical indication.<sup>12</sup> Hence small-scale farmers need to register an association or society before they can apply for a GI.

The fourth schedule of the GI Act, 1999, contains a table of classification of goods. According to the GI Act, the registrar is required to classify a good based on the international classification of goods and services as provided under the Nice Agreement, 1957 (WIPO) for the purposes of registering a GI.<sup>13</sup> This classification categorises all goods in 34 classes (see 'Fourth Schedule Classification of Goods' of the GI Act <http://ipindia.nic.in/girindia/>). For example, Darjeeling tea has been registered under Class 30. Other items listed under Class 30 are coffee, cocoa, sugar, rice, tapioca, sago, flour and preparations made from cereal, bread, pastry, confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces; spices. Class 24 includes textiles and textile goods; agriculture, horticultural and forestry products and grains not included in other classes – fresh fruits and vegetables, seeds, natural plants and flowers; foodstuffs for animals, etc. fall under Class 31.

A number of GIs exist in India. These include products such as Darjeeling tea, Nagpur oranges, Alphonso mango, Mysore jasmine (flower), Malabar Arabica coffee, Coorg green cardamom under the agricultural category; Feni (local alcoholic brew), Nashik valley wine, Kannauj perfume, Kanpur saddler, Mysore sandalwood oil under the manufactured category; Chanderi saris, moirang phee (manipuri stole), Kullu shawl, under the textile category; Bhagalpur silk, Madhubani painting, Banaras brocades and sarees, handmade carpet of Bhadoi under the handicrafts category.

A GI is registered for a period of ten years and the registration may be renewed for a period of ten years at a time (though it needs to be renewed before the expiration of the registration). By registering a GI in India, the rights holder can prevent unauthorised use of the registered GI by others by initiating infringement action by way of a civil lawsuit or criminal complaint.

A GI serves as an assurance to the consumer regarding the authenticity of the origin of a product or its association with a particular place and quality. A conscious consumer may seek out a GI registered product in the market place or be prepared to pay a reasonable premium on a product which has received the legal assurance of being a GI. It helps the consumer differentiate between the real product and a product that may be getting passed off in the name of the original product and which won't necessarily have the same attributes (taste, appearance, etc.).

While the use of GI is limited to those who produce goods within certain geographical and production parameters, there is no restriction on the number of authorised users registering if they are *bona fide* producers or authorised users (Apte 2006: 71).<sup>14</sup>

No one can legally pass off<sup>15</sup> or infringe the rights of a holder of a registered GI. The authorised user has the exclusive right to use the GI in relation to the goods for which the GI is granted. A person infringes a registered GI where he/she is not an authorised user, and uses such a GI to falsely indicate or suggest that goods originated in a geographical area.<sup>16</sup> The registered GI

<sup>9</sup> Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act 1999.

<sup>10</sup> Section 5 (1) and (2) of the Geographical Indications of Goods (Registration and Protection) Act 1999.

<sup>11</sup> Section 6 (1) of the Geographical Indications of Goods (Registration and Protection) Act 1999.

<sup>12</sup> Section 11 (1) of the GI Act, 1999.

<sup>13</sup> Section 8 of the GI Act, 1999.

<sup>14</sup> Section 1(4)(b) of the GI Act defines 'authorised user' as one who is registered under Section 17 of the Act. According to Section 17, any person claiming to be the producer/ user of the goods in respect of the GI obtained on that good, has to also register as an 'authorised user' of the GI under Section 17 (1) and (2) following the process articulated in Section 17 (3) of the act.

<sup>15</sup> This means to misrepresent the goods or services as being the goods and services of another.

<sup>16</sup> Section 22(1a) of the GI Act, 1999.

is considered as infringed also when one uses any GI in such a manner that it constitutes an act of unfair competition including passing off in respect of the registered GI.<sup>17</sup> For example, the famous Patola sarees are woven in the region of Rajkot and Patan in Gujarat. The Rajkot weavers use a single ikat (dyeing technique) in their weave whereas the Patan patola weavers use a double ikat technique, thus making the end product unique and more expensive. However, there is a good possibility that an unaware customer may not be able to differentiate between the two as both the sarees are sold under the name Patola sarees. A GI on a double ikat technique and consumer awareness would prevent a competitor from passing off a product made using a single ikat technique.

Wrongly passing off of a GI carries a penalty of imprisonment for a term, which would be greater than six months and may extend to three years; with a fine of not less than Indian Rupees (INR) 50,000 (approx. US\$827<sup>18</sup>) but may extend to INR 200,000 (approx. US\$ 3310).<sup>19</sup>

A total of 200 products have been registered by the Indian GI Registry office since 2003. Of these, 193 are of Indian origin; 128 are handicrafts including fabric and textiles, 44 are agricultural products including horticulture, 16 are manufactured products which include wines and spirits, honey and soaps; and 5 are food stuffs. Previously, most applications were received from the southern states of India. In the last five years, the GI Registry office has been organising outreach programmes which have led to an increase in the number of applications received from the rest of

the country. It is clear from the review of the registry lists that the majority of registrations in India are in the field of agriculture and handicrafts, both of which form the basis of the majority of rural livelihoods in India. This demonstrates the potential for effective GIs to improve livelihoods and alleviate poverty in rural communities. (For a list of all products registered since 2003, see <http://ipindia.nic.in/girindia/>).

In addition to the registration of Indian products, a few foreign goods such as Tequila from Mexico, Champagne and Cognac from France, Scotch whisky from the United Kingdom, Porto and Douro wines from Portugal, Napa Valley wine from USA, Pisco from Peru, and Prosciutto di Parma ('Parma ham') from Italy have also been registered by the GI Registrar. This is done to ensure marketability of their product in India and to see that no one misuses the reputation and goodwill of these goods in the country. This also ensures the consumer in India protection from deception by someone selling inferior goods using the name of these products or otherwise misleading people as to their origin. This protection is extended to goods emanating from other countries only when they register the goods in India.

In light of the significant increase in GI applications made to the GI Registry office in recent years it is important to understand whether the increase in the number of registrations has brought any definite and tangible benefits to the authorised users of the GI. The next chapter uses five case studies to explore this question.

<sup>17</sup> Section 22(3) of the GI Act, 1999 clearly mentions the following as acts of unfair competition: any act which could create confusion or mislead a third party by use of a registered GI on the nature, the manufacturing process, characteristics and quality of the goods. Use of expressions such as 'kind, style and imitation' will also be considered as infringement of the registered GI (section 22 of the GI Act).

<sup>18</sup> Exchange rate on 5<sup>th</sup> Sept 2014, as provided by Citibank N.A via Google converter.

<sup>19</sup> Section 39 and 41 of the GI Act, 1999 read with the Rules 2002s.



## 5

# India's experience with geographical indications

This chapter examines the contribution of GIs to the social and economic development of local communities who are holders of traditional knowledge. If a GI product is successful in enhancing the incomes of producers, farmers or artisans, this could indirectly lead to the preservation of biological resources and traditional knowledge. The study selected five products, of which four have been registered with the GI Registry, and one (Basmati rice) that has not yet been approved. These cases have been examined to analyse the costs and benefits of obtaining GI status/protection. Of the five products selected here, three are agricultural goods (Darjeeling tea, Navara rice, and Basmati rice, one is a manufactured good (Goa Feni) and one is a textile/handicraft (Kota Doria saree). Through a review of the literature, and meetings with a number of officials from the GI Registry office, government representatives, organisations that have applied for GIs and producer groups, we have gained understanding of the costs and benefits of a larger number of GIs, including handicrafts and textiles.

## Case Study 1: Darjeeling tea, Darjeeling district, West Bengal

Darjeeling tea is world famous and is one of the most expensive teas in domestic as well as international markets. It is known for its distinct flavour and aroma. It grows in a particular region in India – the Darjeeling district of West Bengal State in the Eastern Himalayas – at an altitude of between 1,500 and 2,000 metres. Tea has been cultivated in this district for over 150 years. The flavour of Darjeeling tea is attributed to a combination of soil types, water quality and weather conditions such as humidity and temperatures that occur in the district. Tea plantations are spread over an area of 19,000 hectares in 87 gardens, producing nearly 10 million kilograms of tea and employing a workforce of 52,000, of which 60 per cent are women.<sup>20</sup>

Darjeeling tea has enjoyed a good reputation worldwide for over a century. The export of Darjeeling tea stood at around 6.9 million kg in 2011 when production was around 9.2 million kilograms (Dutta 2012).

<sup>20</sup> [www.darjeeling-tourism.com/darj\\_000bd.htm](http://www.darjeeling-tourism.com/darj_000bd.htm)

Figure 1: A map of tea gardens in Darjeeling that have registered to use the name and logo of Darjeeling tea

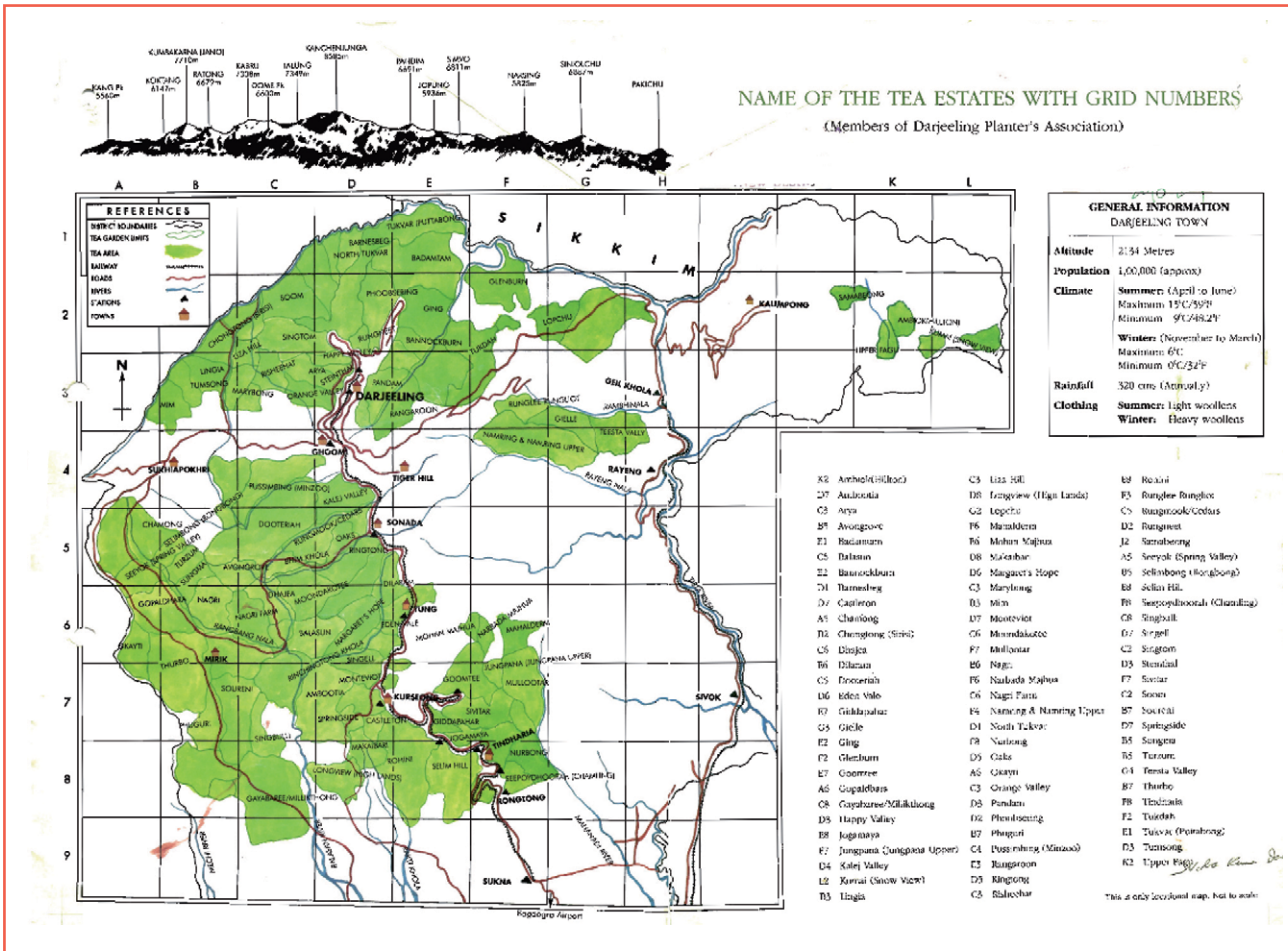


Figure 2: The Darjeeling tea logo



Although the tea industry is largely private, it is controlled by the Tea Board<sup>21</sup>, established under the Tea Act, 1953. The Tea Board is under the control of the Ministry of Commerce and Industry, and deals with all administrative matters related to tea from cultivation to processing, promotion, sales and certification, trademarks etc. For a decade now, India is facing major competition from other tea producing countries such as China, Sri Lanka and Kenya (Ravindran and Mathew 2009). The Tea Board works closely with the Darjeeling Tea Planters Association to promote and protect the interests of the tea industry.

Prior to applying for GI, the Tea Board created a logo depicting a lady carrying a basket used in collection of tea leaves and registered it as a certification trademark under the Indian Trade and Merchandise Marks Act, 1958 in 1986. Over the years, the board registered the same logo as a trademark in Japan, Egypt, UK, USA, Germany, Austria, Spain, France, Portugal, Italy, and Switzerland to enable it to take action in these countries if someone misused the trademark. It applied for the GI

registration of Darjeeling tea and a slightly modified logo without the basket in 2003. The GI name and logo were the first two items to be registered under the GI Act, 1999, in 2004 in India.

<sup>21</sup> www.teaboard.gov.in

After registering Darjeeling tea under the GI Act, 1999, the Tea Board went on to hire the services of a World Wide Watch agency, Compumark, to monitor the use of the logo and name of Darjeeling tea. The role of Compumark was to monitor and report cases of unauthorised use of the registered GI in India and overseas to the Tea Board. This intervention has helped uncover several attempts of unauthorised uses of the name Darjeeling. Based on the information provided by the agency, the board took action and has succeeded in resolving some cases (Ravindran and Mathew 2009). Being a hugely popular and a highly valued product, the incentives for misuse of the name and its logo are quite high. The Tea Board found a number of organisations of international repute partaking in malpractices. Some of the cases of misuse identified by Compumark are as follows: companies in France were found to be using the name 'Darjeeling' to sell perfumes, clothing and telecommunications equipment; Israel was found to be using the logo to sell agricultural and horticultural products; and one company in Japan was using the name 'Divine Darjeeling' to sell tea, coffee and cocoa.

The Tea Board has taken several actions over the years to protect the interests of tea growers and sellers, and has succeeded in settling some disputes through negotiations. In one case, following a legal notice from the Tea Board, the popular perfume brand of Switzerland, Bulgari, agreed to withdraw the use of the name 'Darjeeling tea' from one of its men's perfume range called 'Darjeeling tea fragrance for men'. During the period 2005–09, the Tea Board raised objections in 15 cases of infringement and misuse of the name 'Darjeeling' in countries such as Russia, Japan, USA, France, Germany, Israel, Norway and Sri Lanka (Ravindran and Mathew 2009).

The first litigation and court decision involving GIs in India came in connection with the first two registrations in the GI Registry under the GI Act – the word 'Darjeeling' and the corresponding logo. The Tea Board sued a property of a renowned chain of leading hotels in India, ITC Sonar, for naming its executive lounge 'Darjeeling Lounge'. The case made against the hotel was that this act amounted to an infringement of the GI belonging to the Tea Board and the hotel had used an unfair means of competition and it also alleged this to be a case of 'passing off' (ie. a dishonest claim) under the GI Act. A single judge at the Calcutta High Court dismissed the interim application in April 2011 stating that the focus of the GI Act is on goods and not on services. The lounge in the hotel services high-end customers and other visitors who may drink various beverages there, including Darjeeling tea. It was decided that the name Darjeeling used by the hotel

did not deceive or confuse anyone (Siingh and Seth 2011). The judge refused to give an injunction to the Tea Board. The Tea Board appealed to the division bench of the Calcutta High Court, which upheld the earlier decision of the single judge. The division bench decided that the Tea Board had failed to make out a *prima facie* case of passing off.<sup>22</sup>

When it comes to attributing the name of a place to a product in India, Darjeeling tea is the first that comes to mind. This is largely due to the huge popularity of the product, both in India and overseas. Darjeeling tea has succeeded in attracting a huge premium and sells extremely well. While it is true that the flavour and aroma of the tea is attributable to the place of its origin, it is not merely the status that has succeeded in keeping passers-off away. It is the strict vigilance by the Tea Board by appointing a watch agency and the constant enforcement activity that has kept misuse low. Moreover, the Tea Board has been using the trademark tool to protect the name of Darjeeling even before the GI Act came into being.

In terms of benefits of GI status for Darjeeling tea, Dotta (undated) notes an improvement in the quality of tea (as a result of strict rules around chemical use, new plucking methods), which has resulted in a growing demand for the tea on domestic and international markets, involving steadily increasing numbers of countries.<sup>23</sup> Price increases over the years in sales at auction for the domestic market have been insufficient to offset the increased costs of production and marketing. GI status has seen improved job opportunities (with a slowing down of emigration from the area).

However, in regards to enhancing the incomes of small-scale producers, farmers or artisans, and indirectly leading to the preservation of biological resources and traditional knowledge, the positive impacts of the GI are limited. This reflects the nature of the dominant production systems in the region, which are almost entirely large-scale farms averaging 200 hectares per plantation. The role of the local communities is limited to the plucking of tea leaves. These local people largely serve as labourers – some are permanent workers in the tea plantation and some are engaged seasonally. The area under cultivation, volumes produced and number of tea estates has increased since the GI for Darjeeling was obtained (Dotta undated). This has led to some improvements in employment opportunities and conditions for tea pickers, with associated social and economic benefits, but much depends on the attitude and mindset of the management of the estate. In the case of Darjeeling tea, it can be concluded that the GI on its own does not really provide any benefits for the tea pickers or help to protect their traditional knowledge.

<sup>22</sup> <http://spicyindia.blogspot.in/2011/08> by Advocate Sumathi Chandrashekar.

<sup>23</sup> [www.fao.org/docrep/013/i1592e/i1592e03.pdf](http://www.fao.org/docrep/013/i1592e/i1592e03.pdf)

Benefits for the Tea Planters' Association are also attributed to other mechanisms, such as use of a combination of certifications that has helped Darjeeling tea add value and gain a premium – several tea gardens in Darjeeling district have converted to organic and are also Fairtrade-certified. A Fairtrade certificate brings additional facilities to the tea plantation worker.

This case shows that there can be some benefits from obtaining a GI, though the economic benefits do not necessarily outweigh the extra investments needed by producers for marketing and production (e.g. to deliver quality improvements). Indeed, the costs involved in registering and protecting the quality sign are very high, and these costs (and efforts) have been borne by the Tea Board of India, rather than collective action on the part of industry. The Tea Board also pays the fees of the supervisory agency and the costs of any necessary legal action. The government of India then compensates the board as part of its market promotion endeavours. The external support received from the Tea Board for the legal protection of the quality sign has been instrumental in ensuring benefits are received from the GI. The board is still required to play a very significant role in protection (Dotta undated). This level of investment – effectively from government – is unlikely to be viable for smaller producers and may not be justifiable from the government's perspective for products that are not produced in large quantities, do not already have an excellent reputation on international markets and therefore do not have the potential for substantial export earnings. However, governments should also consider supporting GI enforcement for small-scale producers as a way to reduce poverty and conserve biocultural diversity.

This case demonstrates that merely registering and obtaining a GI is not enough – efforts and investments also have to be made to be vigilant in the market to ensure that no one, other than the authorised user, uses the registered name to sell their products. Having the resources and specialist support to keep an eye on the market to ensure that the rights of the authorised users are protected, is clearly very advantageous – but this may be out of reach for many small-scale farming communities.

## Case Study 2: Navara rice, Palakkad district, Kerala

Navara is one of the traditional rice varieties found in the southern Indian state of Kerala. It is a native genetic resource of Palakkad district and also endemic to the region. It is known for its medicinal properties and used in Ayurveda, one of the main Indian systems of medicine. Navara rice has been commonly used in households in South India as a home-based remedy for treating several ailments such as urinary problems, stomach ulcers, polio, and haemorrhoids. It is used also as an aphrodisiac and a muscle-repairer. In Ayurveda, the oil extract of Navara is used as an ingredient in an oil formulation for treatment of numbness, body aches and spondylitis. The straw of Navara paddy is used as a bed for patients suffering from rheumatism. It is also claimed that local folk healers in the district use this variety of rice to treat snake bites and liver diseases (Sugden 2012).

Navara was selected for detailed analysis because it is a unique variety of rice with a high medicinal value, endemic to the state, and because the acreage grown under this variety has been declining over the years. The cost of production is high and the yield is lower than other rice varieties being cultivated in the area. As a result, farmers are giving up the cultivation of this variety. However, there is a high cultural value attached to this rice, particularly regarding its health properties. During the period from 15 July to 15 August, when Kerala receives maximum rainfall, the body defences are weak. Local people include Navara rice gruel in their diet during this period to help develop their immunity. Navara rice powder cooked with brown sugar and milk is considered to be nourishing for babies. Boiled milk mixed with cooked Navara rice is easily digestible and hence used as a health food for older people.

Kerala has a rich tradition in paddy farming. However, over the last 50 years, many traditional varieties have either become extinct or are grown at a very small scale. Also, people have shifted to high yielding rice varieties of paddy or/and other commercial crops, such as banana and rubber. The decade of 1990s has been a difficult period for farmers in Kerala. The cost of labour and other inputs has increased manifold and the income from production has not been proportionate to the rise in costs. People have either left their lands fallow or moved on to commercial crops.

In 2000, one farmer (Mr Narayan Unni) decided to give up all other varieties and just focus on Navara for seed purification and expansion of area under Navara cultivation in an attempt to revive this declining variety. He also commenced the process of organic certification of his lands. In 2006, he got his Navara paddy production certified as fully organic. Thereafter, a number of actors (including government research institutions, agriculture universities, scientific research centres and private ventures) approached him when they required seeds of pure Navara.

In 2003, when the GI Act became operational, Mr Unni was already in touch with the Confederation of Indian Industries (CII) in Kerala as he was helping them to formulate the Organic Farming Policy for Kerala and was looking for any opportunity to elevate his farming activity to an enterprise. CII convened a meeting at Unni's home on 9 October 2004 and representatives of all key institutions were invited – various food processing bodies, agricultural universities, department of agriculture, rice farmers, millers and press. They all expressed concern over the declining acreage of several local rice varieties including Navara and hence the risk of losing these traditional varieties. It was concluded that there is a need to incentivise the cultivation of traditional varieties of Navara and that registering Navara for a GI could help farmers improve the returns for their produce. The next step was to create a Navara Rice Growers' Society and register it. The purpose was to sensitise and empower the farmers and also to provide assurance of authenticity to the consumers. Registration of a society or association was also a requirement to apply for a GI. The society or producers' association is required to develop the rules/code of practice around production that are needed to obtain GI, and to ensure the producers take responsibility for monitoring and post-registration processes.

As soon as the Navara Rice Growers' Society was registered, Unni decided to apply for the GI registration. Unni, like other farmers of the association, is a small-scale farmer. After three years and an investment of US\$ 3,500, the society succeeded in getting Navara rice registered as a GI (in 2007) and this became the first agricultural product in India where the initiative to register the a GI was taken by a farmer. It was not easy for Unni to mobilise these resources. He had to borrow from family, friends and other farmers.

Unni was convinced that a GI would be an appropriate tool to protect the rice variety from going extinct. He was hopeful that a GI registration on Navara would help the farmers get a better market and maybe a better

price. He thought that an increased income from Navara would serve as an incentive to the farmer to continue to grow this traditional variety and to motivate more farmers to resume cultivation of Navara. He had observed cases of other rice varieties being passed off as Navara, which implied that Navara was seeing greater demand than other rice species. By protecting it and guaranteeing its authenticity to consumers via a GI, Mr Unni might be able to increase his sales and/or prices.

However, the reality has been quite different – because of the expense of producing the rice (high labour requirements, low yields etc.) few people now buy Navara because the price is very high compared to normal rice, and growers are barely able to break even. The Navara Farmers' Society fixed the price of this rice at INR 400 per kilogram (US\$ 7<sup>24</sup>) based on costs of production and a small percentage of profit. But, because of the fall in sales (and increase in production costs), the number of farmers growing this rice variety has decreased (Sugden 2012). At present, a large part of the produce is being used for consumption by the farmers themselves on special occasions, or is being used as gifts.

One key barrier to the successful marketing of authentic Navara rice may be 'passing off' – the selling of products which make claims to include oil from authentic Navara but which in reality may not be authentic. The Ayurvedic oil prepared using Navara rice is called Navara *Tailam* (oil). The main ingredient in this product is Navara husk oil. Any Navara rice-based product should be bought from those who are registered with the GI Registry as authorised users – to be ensured of its authenticity. To the surprise of the registered farmers growing Navara rice, the Ayurvedic drugs manufacturers are making and selling Navara *Tailam* but do not purchase the Navara rice husk oil from these registered farmers. Once the Navara Rice Growers' Association registered the Navara rice for GI, they obtained exclusive rights to sell the variety. Any farmer who begins to cultivate Navara rice can apply to the GI Registry office for registration as an 'authorised user'. As per the GI Act, all growers and users of the variety have to be registered with the GI Registry to sell the oil and market it as Navara. The question that therefore arises is, from where is the Ayurvedic drug industry procuring their Navara rice oil? It would be useful to explore the quantity and price of Navara rice oil sold by [the Ayurvedic drugs industry to see if there is market demand and what the possible price point would be. That would establish whether the authentic Navara rice growers could sell their product at a decent price if instances of passing off were eradicated.

<sup>24</sup> Exchange rate on 8<sup>th</sup> Sept 2014, as provided by Citibank N.A via Google converter.

In addition to the challenges posed by possible evidence of inaccurate marketing and passing off, it was found that there is a lack of awareness among the general public and prospective consumers about Navara and the unique health benefits that it provides. Unni has made several efforts. He has developed two websites; participated in 52 trade fairs, conferences and workshops to promote and disseminate information about Navara rice variety. Unni was able to have a biochemical analysis carried out to compare the nutritional value of Navara – and especially organic Navara – to normal/modern rice to provide evidence of its higher nutritional value.<sup>25</sup> Unni is using innovative ways to sell Navara rice. He is using a film star as a brand ambassador to spread awareness about its properties and he is also trying to attract the health-conscious affluent Indians to buy his rice. Unni has sought to add further value to this rice variety (in the hope of gaining higher returns) by improving the packaging and labelling which provides a lot of information on the nutritional value of the product.

Unni, along with other farmers, is also trying to popularise local recipes that use Navara as the main ingredient in his social circle of friends and family. One such recipe is the milk rice pudding, *Paysam*, a dish made out of Navara rice and jaggary syrup, clarified butter, banana, ginger, cardamom powder. Unni has also tried to encourage the local restaurateurs to offer Navara rice on their menu list, but he has not been very successful so far. Unni has not lost hope that these efforts will pay off – despite mixed results. His professionally designed website<sup>26</sup> brings a lot of visitors to the farm to see his field experiments for cultivating Navara rice. He has also received a number of awards from the government of India. He has been successful in getting the Navara rice registered under the Protection of Plant Varieties and Farmers' Rights Act which should ensure that any commercial use of the variety by plant breeders will result in benefit-sharing with Navara rice farmers. He is also a member of the Protection for Plant Varieties and Farmers Rights Authority as a farmer representative. Despite all these achievements and efforts, Unni is still only able to sell 1,000 kgs of the 2,500 kgs he grows on his 10 acre farm.<sup>27</sup> Sales by other farmers in the group are still small.

This case shows that GIs could potentially be used to revitalise traditional crop varieties, but that they are unlikely to make a difference unless the variety already has good market potential. Popularising the

product required substantial investment in marketing and building the profile of the brand/product. In order to protect and promote Navara, continued efforts are needed to make efforts to invest in its promotion (for example by government and industry). This will not only help fetch better incomes, secure livelihoods, promote public goods such as better health, but also revive a traditional variety, leading to conservation of biocultural heritage. Campaigns to popularise the concept of GI among the producers and consumers are also likely to be needed. The GI Registry also needs to strengthen its regulatory mechanism in penalising the Ayurvedic drugs manufacturers if they are passing off any oil as Navara oil – further investments will be needed in effective monitoring and enforcement and the costs of possible legal challenges. Without this support, TK holders and promoters of Navara will not succeed in getting good returns on their product and will eventually stop growing the variety – with a possible loss to society of a rice variety that has proven health benefits.

This case suggests that detailed analysis of the potential of GI registration to deliver economic benefits – including of current and potential market size – is an essential first step before making the necessary investments in obtaining GI status. If the market potential is uncertain, it may be best to invest in marketing and promotion before taking steps to register a GI.

### Case Study 3: Basmati rice

Basmati is a long-grained aromatic rice grown in the northern part of India and some parts of Pakistan. It is one of the most popular rice varieties, both in India and on the international market, and is sold at a high price. In the year 2013–14, India exported 3.7 million metric tons of Basmati rice to the world, worth INR 29,300 crores (US \$ 5,000 million).<sup>28</sup>

The name Basmati is derived from two words – 'bas' meaning 'aroma', and 'mati' meaning 'ingrained from the origin' or 'the one containing aroma'. In India, Basmati has been traditionally grown in the states of Punjab, Haryana, Delhi, Himachal Pradesh, Uttarakhand, Jammu and Kashmir and parts of Uttar Pradesh. Basmati rice has also been grown in Pakistan. Basmati rice is highly valued for its unique characteristics such as its aroma, flavour, and long-grained quality. These distinctive qualities are attributed to a complex combination of factors, including its inherent genetic characteristics,

<sup>25</sup> The label of a 250 grams package of this rice from the Navara farm mentions that Navara is a unique rice suited for people of all ages and is a source of general wellness. Its medicinal properties help build immunity against common ailments, especially in the monsoon season. It is used in various Ayurvedic treatments for skin disorders, certain ulcers, osteoporosis, arthritis, etc. Ongoing scientific studies show that Navara has anti-cancer properties too.

<sup>26</sup> [www.navara.in](http://www.navara.in)

<sup>27</sup> Personal communication with Mr N. Unni, a farmer who gave up his business related to computer sales to revive the cultivation of this traditional variety. 22 July 2013.

<sup>28</sup> [http://apeda.gov.in/apedawebsite/SubHead\\_Products/Basmati\\_Rice.htm](http://apeda.gov.in/apedawebsite/SubHead_Products/Basmati_Rice.htm)



claimed to have produced it using a combination of conventional breeding techniques and biotechnology. Rice Tec had procured the original Basmati germplasm from the US Department of Agriculture, which had acquired it from the International Rice Research Institute in the Philippines. Since the germplasm was acquired before the CBD came into force, there was no obligation to share the benefits from the use of the germplasm with the country of its origin. This US-produced version of Basmati rice is likely to affect the export market for Basmati rice. In addition, due to a number of challenges and complications, Basmati rice has not yet obtained GI status.

The Agricultural and Processed Food Products Export Development Authority (APEDA) filed an application for Basmati rice in the GI Registry office in November 2008. The application seeks to cover a geographical area for GI registration extending from Uttar Pradesh, Jammu and Kashmir, Punjab, Himachal Pradesh, Delhi, to Uttarakhand. Registration of this important product is still pending. The officials<sup>29</sup> of the registry attribute the delay to the number of oppositions that have been raised by different parties including the state government of Madhya Pradesh, and the Basmati Rice Growers' Association of Madhya Pradesh, which represents the interests of the rice growers in Madhya Pradesh. The Basmati Growers' Association has contradicted the map of APEDA showing the Basmati growing area. The government of Madhya Pradesh is strongly claiming that Basmati has also been traditionally grown in some parts of Madhya Pradesh, hence it should be included in the coverage of Basmati shown in the GI-related maps of India. ([www.oryza.com/news/rice-news/india-include-only-traditional-basmati-growing-states-gi-application](http://www.oryza.com/news/rice-news/india-include-only-traditional-basmati-growing-states-gi-application)).

Similarly, the Basmati Growers' Association of Pakistan has opposed the GI because Pakistan is not included as an area of origin of Basmati rice in the GI application in India. Basmati rice is registered as a collective mark in Pakistan under the trademark ordinance, but not as a GI. Pakistan does not have GI legislation, or provisions relating specifically to GIs within its trademark law. India's GI Act (Section 84) requires that foreign organisations obtain GI registration for products in their own country before they can be registered in India. This issue is being addressed by India's Appellate Board (which serves as the court for GIs) and a decision is awaited. Dutfield suggests Pakistan could register 'Pakistani Basmati' and India could register 'Indian Basmati'. This is happening with Pisco which is claimed by both Peru and Chile.<sup>30</sup>

This case shows the challenges of obtaining a GI for products which have a wide geographical spread and of establishing the geographical boundaries for a GI. It suggests the need for an independent mechanism to research and verify GI eligibility. It also highlights the challenges of transboundary cooperation for products originating in more than one country. Obtaining GI status in cases such as Basmati rice requires significant investments of time, energy and financial resources to file the registration and to make the necessary case for which geographies to include. This is likely to be out of reach for most small producers. Any further delay in according GI status to Basmati could hamper the rights of thousands of small farmers producing Basmati rice since other rice growers, traders and exporters can pass off any rice as Basmati rice within India and Pakistan. In the meantime, Basmati rice producers could explore the use of other tools, such as collective trademarks or product labelling, to protect and promote markets for authentic Basmati rice.

## Case Study 4: Feni, Goa<sup>31</sup>

A traditional alcoholic beverage, Feni, is part of the customs and culture of the people in Goa, a legacy of the Portuguese colonial rule in Goa. Feni is drunk at important events, for example birth ceremonies, marriages or funerals. It is believed that the cashew tree, whose apple is the only ingredient of Feni, was introduced into India on the Malabar Coast by the Portuguese in the 16<sup>th</sup> century and it came to Goa sometime between the 1590s and 1640s.

In Goa, Feni is mostly made with the fermented juice of cashew apples (from which cashew nuts hang). Feni is also made with a distilled coconut toddy. With a product so closely attached to the culture of the community in Goa, as demonstrated by its use at important cultural events, the state government decided to apply for a GI on cashew Feni. It is not very clear why 'Goan Feni' has been registered as 'Feni', when the normal practice with most products registered with the GI Registry is to add the name of the place with which it is identified.

Feni was the first beverage to be registered in India with the GI Registry in 2009. As part of their outreach, the GI Registry organised a meeting in 2002 with the help of the Goa Chamber of Commerce. Feni was identified as a product that could be selected for GI with the hope that a GI status would transform it into a global product and attract benefits for the distillers and distributors, and protect it from being wrongfully patented by another state. The Department of Science and Technology of

<sup>29</sup> Personal communication with Mr Prashanth, Examiner, GI Registry, Chennai. February 2013.

<sup>30</sup> Personal communication with Graham Dutfield, 25 February 2014.

<sup>31</sup> Inputs for this case study have been taken from Rangnekar 2009.



the government of Goa was asked to take the lead in preparing the application for a GI. A series of meetings were held in 2004–05, followed by the formation of the Goa Cashew Feni Distillers' and Bottlers' Association, since the GI Act requires a body to represent the sector to make the application to the GI office. The association was entrusted with the responsibility of gathering information for submission of the application. The Goa Cashew Feni Distillers' and Bottlers' Association was registered in July 2006, after which, along with the State Department of Science and Technology, it filed an application seeking a GI on Feni. The application required the collection of archival and scientific material and information for making a case. The draft application based on the information collected was ready by March 2007. This was followed by an internal review of the application and informal consultation with the GI office simultaneously to improve the application. The application was finally submitted in December 2007 and it took two years for Feni to become registered under Class 33 of Schedule Four of the GI Act under the category 'alcoholic beverages'. Not only did this become the first GI case from Goa, it was also the first alcoholic beverage in India to be registered under the GI Act.

Reference to a lot of archival material and information was included in the application for GI registration. However, what is unclear in the registration is the specification of the technique and method of processing Feni. The process used in making Feni is very diverse in the Goan state. The cultural diversity of Goa is reflected in its processing, distilling and marketing. People follow diverse practices in the selection and collection of the raw material, plucking of the cashew apple at different stages of ripening, timing, location and the process and methodology of distillation. The process of GI registration requires documentation of these production processes which is then reflected in the final registration. A degree of standardisation is required on the product, the raw material used, its processing and production process. Given that there is such diversity in cultural practices associated with the production of Feni in Goa, there are differing views amongst the stakeholders (largely members of the Goa Cashew Feni Distillers' and Bottlers' Association) on the practices that should have been registered under the GI Act while seeking a GI on the product. After registering Feni at the GI Registry, the role of the association became paramount to ensure that the uniqueness of the product was maintained. For this purpose, certain standards for the product were to be maintained; however, to

maintain the diversity of a biocultural product and not lose its richness, standardisation for the sake of registration seems counter-productive, and could leave out a number of producers. An alternative is to keep the standards in the GI registration broad. There is clearly a balance to be struck between supporting cultural diversity and benefiting as many producers as possible, and ensuring the quality expected by consumers is maintained for a GI-registered product. One solution could be for different production methods to be included under one GI; or for communities from different cultures/areas to apply for separate GIs.

There is a great deal of traditional wisdom used in plucking apples from the tree and its processing which helps give the final product its uniqueness. It is believed that if apples are plucked unripe, Feni will have a bitter taste, whereas a fully ripe apple, when falls on its own to the ground is sweet. Over the years, changes in Feni making have taken place not only in terms of sourcing of the raw material but also in the processing of the fruit. Whereas the crushing of the fruit was previously done by feet and using heavy stones, distillers now use mechanical crushers.

The local distillers in Goa believe that the cashew apple fruit from Goa is more juicy and potent, whereas the cashew apple fruit collected from the southern state of Karnataka is watery and not so flavourful. Distillers with large operations collect cashew apples from the neighbouring state of Maharashtra as well as from Goa.

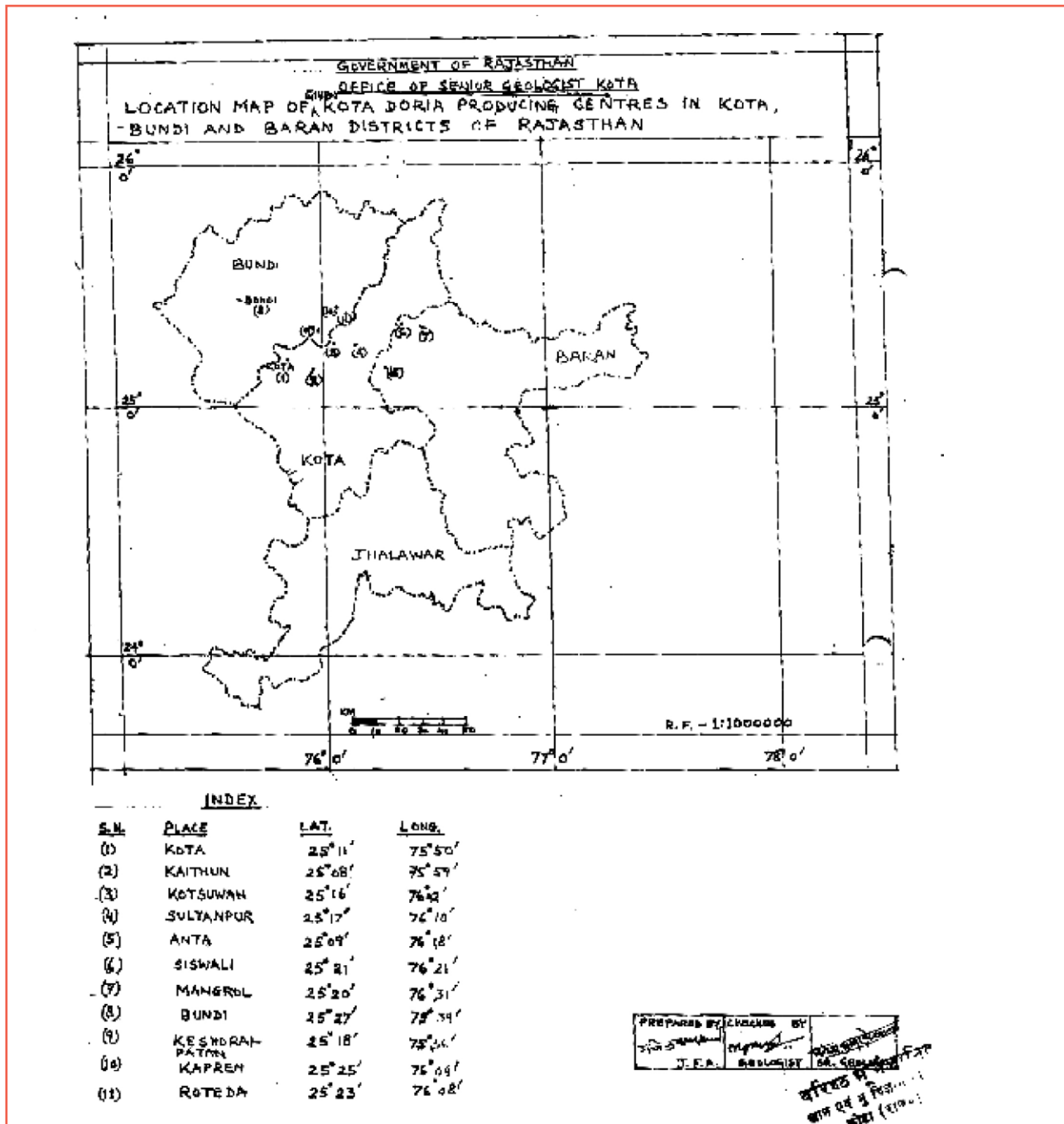
Although Feni has been registered for its GI, some questions still remain to be resolved. Which processes will be considered as specific to Goan Feni? Will Feni made out of cashew apples collected from Maharashtra and Karnataka be considered as the Feni which has obtained GI? Can the alcoholic beverage distilled in Maharashtra and Karnataka using apples grown there also be called Feni, and sold using the GI? Can these distillers be registered with the GI office? What about the traditional knowledge – have the specifications of Goan Feni remained the same as in earlier times? Or have the Goan Distillers' and Bottlers' Association modified the traditional methods as per their convenience? Does GI really protect and promote a biocultural product or a new/modern product? Will traditional knowledge holders benefit? These questions are pertinent to ascertain whether GI is an apt and effective tool for protection of traditional knowledge and biocultural heritage. It will take more time to find answers to these questions. No decision has so far been taken on these matters.

## Case Study 5: Kota Doria sarees, Rajasthan

Kota Doria is a special weave which originated in the western part of the country in the state of Rajasthan. The weavers of this fabric were originally located in Kota district. The Royal family of Kota patronised this handloom weaving tradition. The Kota Doria fabric is characterised by a distinct square pattern of checks. The weavers and their families reside in the Hadauti region spanning three districts of Kota, Bundi and Baran

(see Figure 4). In the past, there were nearly four times as many hand looms as today, but due to the increase in costs of production, growth of the power loom and availability of cheaper substitutes in the period 1990–2000, the demand for hand woven saris decreased significantly. The aggregate number of weaver families has declined from 10,000 some decades ago to 1,000 in 2010 (CUTS International 2010). There are also a large number of other workers in these districts who provide support services such as dyeing, warping and sizing.

Figure 4: Areas in the state of Rajasthan in India where Kota Doria sarees are woven



As part of their cluster<sup>32</sup> development work, the United Nations Industrial Development Organisation (UNIDO) decided to revive this form of production by organising the weavers and helping them apply for a GI registration. UNIDO initiated the process of application for a GI in 2003. It made efforts to motivate the weavers and their associations such as the Kota Women Weavers' Organisation, Master Weavers' Association and other smaller associations in the weavers' villages to come under one banner – the Kota Doria Hadauti Federation (KDHF), a registered body of all Kota Doria weavers. UNIDO explained the benefits of GI registration to nearly 700 weaver families out of the 1,600 spread across this region. At the same time, UNIDO approached the Rajasthan Urban Development Authority (RUDA) (a body of the state government of Rajasthan dealing with rural non-farm development) to partner with them. RUDA's mandate included the development of clusters of artisans and farmers and the capacity building of handloom weavers and their economic enhancement. RUDA supported UNIDO in educating the Weavers' Association on managing the federation and helped prepare the application for GI registration. The Kota Doria Hadauti Federation submitted the GI application in July 2004 and received the certificate of registration in July 2005.

RUDA and KDHF have worked together to develop a strategy to promote the sale of authentic hand woven Kota Doria Sarees and counter the sales and marketing of the Kota sarees manufactured in power looms. RUDA has worked closely with the weavers, master weavers, traders, business community and other government bodies to educate them about the benefits of GIs. RUDA has held door-to-door meetings, trainings on designs, business management workshops, seminars and fashion shows along with the KDHF and the women weavers' organisation, not only in Rajasthan but also in other metropolitan areas of India.

After three years of intensive work, RUDA engaged the services of the Rajasthan Chamber of Commerce and Industry to undertake an assessment of the economic and social impact of GI registration of Kota Doria sarees in 2008. Kota Doria was the first product from the state of Rajasthan to have received the GI status, and the weavers are proud of this fact. Several young weavers who had migrated to other towns in search of jobs have returned to their villages to pursue their old profession of weaving. Earnings in the two years following the receipt of GI registration have increased three-fold. After having attained the GI status, the confidence level of the master weavers has grown manifold and these weavers

have enhanced capacities to negotiate for higher prices with national and international buyers. Demand for authentic hand woven Kota Doria sarees has increased. Weavers who are using the logo of KDHF in their saris and fabric are able to sell at a higher price. While today a metre of Kota doria fabric woven on a powerloom sells at INR 70 per metre, the intricate and handwoven GI-registered Kota Doria fabric sells at INR 130 per metre.<sup>33</sup> The public awareness programmes organised by RUDA were helpful in consumer awareness of the logo and the quality of Kota Doria, but further efforts are required to raise consumer awareness and enable them to distinguish between sarees made in hand looms and power looms. However, the work of RUDA has helped and consumers are paying a premium for the hand woven sarees. The logo used for Kota Doria is providing assurance to customers and thus increased confidence about quality. With the increased incomes, the weavers have improved their standard of living and are able to send their children to school and they all have properly constructed houses. The study found that more work needs to be done with the traders and police department to motivate them to play their role in protecting the interests of the Kota Doria weavers.

However, a more recent study undertaken in 2010 by two researchers of CUTS International – a research and advocacy organisation with offices in India, Africa, Europe and Vietnam – reveals a slightly different story. A value chain analysis carried out by these researchers has found that while the GI recognition has helped differentiate between the authentic hand woven and loom woven Kota Doria sarees, the benefits accruing to most weavers is nominal. This study reveals that it is the master weavers who have gained substantially from the GI status. Of the nearly 1,600 weaver families, master weavers were 50 in number and were close to the KDHF and took advantage of the support received from government and other agencies while organising the weavers. Master weaver are weavers but also serve as traders. This study also carried out a detailed analysis of the socio-economic background of the weavers. Most of the weavers belong to the Ansari community and practice Islam. Almost 75 per cent of the weavers are women with very low literacy levels. The production of sarees and kota fabric is carried out at the household level, as Muslim women rarely work outside their homes. They own one handloom and normally two to three people in the household are engaged in the weaving. It is low output production where the women are able to produce five sarees on average each month. The trade in the Kota Doria sarees is completely controlled by the master weavers as they hold the buying power. They

<sup>32</sup> Clusters are agglomerations of interconnected companies and associated institutions. See: [www.unido.org/en/what-we-do/poverty-reduction-through-productive-activities/business-investment-and-technology-services/clusters/clusters-and-networks-development.html](http://www.unido.org/en/what-we-do/poverty-reduction-through-productive-activities/business-investment-and-technology-services/clusters/clusters-and-networks-development.html) for more information.

<sup>33</sup> Personal communication with Parvinder Pal, MD of SUTRA, an agency which works to promote markets for rural arts and crafts and textiles; formerly associated with the UNIDO programme.

bring the orders and liaise between the producers and the markets. These master weavers bring information and give instructions to the women weavers. Master weavers sell the product in two ways – through wholesalers and retailers in Kota city, and door-to-door sales to retailers in other cities. The CUTS study reveals that the retailers do not make any clear contracts with the master weavers in advance, hence the master weavers have to make an effort to sell the wares which doesn't guarantee the traditional weavers any assured return until their products are sold in the market.

The study also highlights that GI on Kota Doria has only marginally protected the traditional market. Fakes and imitations are still available in the market and the GI holders are not in a position to seek legal action because of a lack of funds and reach. The study also articulates that a feudalistic governance structure of the value chain of Kota Doria further affects the pricing and results in low returns to the women weavers.

The study proposes that making the trade more demand-driven could improve the sector and bring benefits to the weavers. High-end retail outlets like Fab India and Anokhi could play an important role by working directly with the weavers, avoiding the master weavers, to supply to their stores with high quality, made to order products.

In terms of social impacts, the GI has strengthened the social fabric of the community members especially those holding and sharing the same traditional knowledge. The creation of the cluster of the craftsmen (ie the KDHF including women weavers) and the capacity building exercises has brought the community together and led to enhanced bonding among them. Not only does it bring the knowledge holders together in the form of an organised and registered body, it also builds cohesion in their work, enhancement and refinement of knowledge and enhanced opportunities for transmission of knowledge from the older to the younger generation, as evidenced from the interviews. These social impacts are important for the promotion and protection of traditional knowledge and biocultural heritage.

It is quite evident from this case that GIs can increase revenues from biocultural products and revitalise traditional production systems, provided the products are well-positioned in the market. This is likely to require external support from various players, including government agencies, to promote the sale of traditional products and enable consumers to differentiate them from fake and duplicate products. However, it also highlights the risk of benefit capture by powerful traders in the value chain, and the need to ensure that poor and unorganised producers get a fair share of the increased revenue generated (eg by selling directly to retailers).

# 6

## Geographical indications and livelihoods: opportunities and challenges

### Opportunities

It is clear from the aforementioned cases that geographical indications hold some potential to contribute to sustainable rural livelihoods in India. This potential stems from the ability of the GI to differentiate products and help protect the goodwill accumulated over time. GIs depict an association of the product with the growers or craftspeople of a particular place in the mind of the buyer (Zografos 2008). This registration and the label associated with it extend assurance to the consumer of the GI product's quality, specifications, origin and authenticity, which can elicit a willingness to pay a premium. The GI registration therefore offers a tool for added value to a biocultural product, and can enhance protection of the rights of the authorised users over their traditional knowledge-based products by enhancing capacity to prevent passing-off. However, as this study suggests, a GI is only likely to be effective in value addition if the product is already profitable, and if the increased revenues actually reach the traditional producers in rural communities.

If the producer can access a market to sell its products and obtain a decent price (perhaps even a premium relative to similar goods) a GI can serve as an incentive for producers to continue a traditional craft, and can reverse the decline of traditional production methods as seen in the case of Kota Doria sarees. If GIs can revitalise traditional craft products, this suggests that they also have potential for revitalising traditional crop varieties and livestock breeds. GIs can help traditional knowledge holders get increased recognition for their traditional knowledge and higher benefits from its commercialisation through full benefit capture as opposed to relying on possible benefit-sharing by others. However, excessive standardisation may be difficult to achieve in products that rely on local biological resources and diverse cultural practices, as the case of Feni suggests, and standardisation could reduce the diversity of cultural practices and traditional knowledge.

Given the cultural significance attached to TK-based or biocultural products, GIs can help to strengthen social cohesion and enhance the development of local communities. In order to apply for a GI, one of the prerequisites is to register a society of the producers. In the case of Kota Doria sarees, an attempt was made to bring the women artisans together under the aegis of the Kota Doria Hadoti Federation. Since the women work from their homes, there is very little opportunity for them to meet and discuss any matters. Over a period of time, the meetings of the federation have stopped happening. But another case of artisans from *Shanti Niketan* (in the state of West Bengal) related to leather goods, exemplifies how a GI registration has helped the artisans organise into institutions of self-help and build cohesion in their work. Artisans, instead of competing with each other, have come together to benefit from economies of scale and seek recognition from formal institutions such as financial institutions and banks, leading to better access to their services, such as loans, to expand their work.

## Challenges

The evidence offered by the cases explored in this report shows that GI has thus far not provided substantial benefits to producers of biocultural products where the products are not already profitable, and where the trade is controlled by industry or traders rather than producers. For example, a GI appears to have been particularly successful in the case of Darjeeling tea – but what has aided this is the fact that Darjeeling tea is an international name; the tea industry is well established and well supported by government. The tea gardens in Darjeeling are largely owned by big corporates or rich families, who hold the GI. The role of smallholder farmers or small artisans is restricted to employment as farm labourers and it seems that benefits from the GI have been limited for them. The success of GI in Darjeeling tea is attributed to the close vigilance offered by the Tea Board and Tea Planters' Associations and its financial capacity to employ a surveillance company to monitor and enforce the GI internationally. External support is essential in promoting GIs until a sustainable business model can be developed and demonstrated, especially for small-scale producers.

When it comes to a product based largely on natural or biological resources, and produced using different cultural practices, this can bring challenges for specification and standardisation, as we see in the case of Feni. Broad specifications could accommodate the diversity of biological resources and cultural practices

and benefit more producers, but could also risk compromising a certain quality that consumers expect in a GI-registered product. However, narrow specifications along with increased markets can also bring attendant challenges of availability and sustainability of raw materials. In the case of Tequila in Mexico where only one agave variety may be used, many other agave varieties are no longer being grown (Dutfield 2011).

The case studies show that producers of biocultural products face a range of challenges in the journey to obtain GI registration and then more challenges in the post-registration phase. We now explore these specific challenges in more detail.

## Pre-registration challenges

All the cases explored in this paper have involved the support of external actors to seek GI registration. A literature review has also shown that external agencies often play a role in promoting, encouraging, supporting and sponsoring the registration of these products. Small producers in developing countries do not typically have the capacity to deal with the complex bureaucratic systems of applying for GI registration and to market the product without the support of external agencies (eg state governments, civil society organisations, donors, etc.). In the case of Kota Doria, UNIDO supported and facilitated the registration of this product with help from the Rajasthan Urban Development Authority. UNCTAD has also facilitated the registration of several products from across India. State governments in some states, such as Himachal and Punjab, have been proactive in promoting and facilitating the GI registration of several products.

UNDP India has recently supported medicinal plant collectors and growers of the Himalayan state of Uttarakhand in filing an application for *Cinnamomum Tamala*, a plant that grows between 1,500–2,700 metres above sea level. It is a naturally-occurring plant used extensively in controlling diabetes and also used as a spice in several Indian culinary dishes. UNDP oriented and mobilised the local collectors and growers of cinnamomum in seven districts of the state on the advantages of registering this popular plant particularly given its specific medicinal properties. It brought together representatives of the collectors and farmers from these seven districts to form a collective and registered the body – the Uttarakhand Tejpatta Udpadak Samiti (Uttarakhand Cinnamomum Growers' Association). The association represents 4,000 collectors and farmers who will be registered as authorised users once the plant gets a GI. This is likely to be the first GI in the category of natural products.<sup>34</sup>

<sup>34</sup> Currently being carried out under a project supported by the Global Environment Facility, United Nations Development Programme and the government of India on medicinal plant conservation in three Indian states.

The process of registration is typically not a short one, requiring legal assistance and financial resources which are beyond the capacity of most small producers. The Navara rice case has exemplified the difficulties faced by small farmers in undergoing the process of registration. The costs in the pre-registration phase include expenses related to the mobilisation of farmers, registration of a body which will apply for GI registration, engaging a legal expert to develop the case which requires a considerable amount of time to gather archival material to prove that the product emanates from a particular geography and has essential characters of that place. This process normally takes a year, based on cases studied in this paper and conversations with other stakeholders. It takes a number of visits to the GI Registry office which has only one office in India (in Chennai, Tamil Nadu). And if it is a contested case, the expense increases manifold as one has to make several visits to the Appellate Board if there is an opposition from anyone on the filing of the registration of a product. It normally takes anywhere between one to two years to get a GI application approved once the application has been submitted, if it is not contested.

As examples, the Basmati rice case has been in process for over six years due to various contestations. In the Feni case, it took the state government and the Bottlers and Distillers' Federation five years to finally obtain the GI. It took some time for the federation to come to a common understanding and commitment on the internal rules for specifications of production and marketing. These sorts of challenges need to be borne in mind alongside the time normal required for the formal registration process. The Feni Bottlers' and Distillers' Federation members are relatively wealthy compared to the Navara rice growers, and they received the support of the state and the Confederation of Indian Industries, while the Tea Board supported the GI registration on behalf of the tea plantation industry. In contrast, the small-scale farmers in the Navara Rice Growers' Association invested their own resources and borrowed funds to apply for the GI registration. In addition, knowledge of GIs and the GI registration processes amongst small producers is limited, which can pose a key challenge and requires investments of time and resources to build knowledge and capacity. This suggests that small producers of biocultural products are getting less government support for GI registration, even though this is where support is most needed and where GIs have most potential for supporting traditional knowledge and biocultural heritage.

## Post-registration challenges

All the cases explored in this report show that the mere registration of biocultural products for GI is not enough to generate guaranteed benefits to the producers. There are significant costs related to the post-registration phase, which are necessary for the GI to be effective, such as ensuring the GI is recognised in the marketplace and sought out by consumers, as well as the costs of monitoring and enforcement. For instance, GI holders may need to invest in good packaging, branding, publicity and marketing. Once again, small producers and poorer communities typically require the support of external agencies (government, non-government and donor agencies) for promotion, product development and creation of a market.

GI holders also have to invest in monitoring and vigilance to ensure that no one else passes off their goods as the goods of a GI holder. This was the case for Darjeeling tea – the Tea Board (controlled by the Ministry of Commerce and Industry) has invested in the services of a monitoring agency to help protect the rights of the Authorised Users of Darjeeling tea GI and paid for several legal cases.

Weak regulatory and monitoring mechanism and poor implementation of the law limits the benefits of GI registration from reaching the authorised users – unless users have the resources to pay for monitoring and enforcement themselves – as is the case with Darjeeling tea. The GI Act has established a regulatory and inspection mechanism to ensure protection of the rights of the authorised users but the mechanism is almost non-functional in most parts of the country.<sup>35</sup>

Investment is also needed in raising consumer awareness of a GI, and what it signifies in terms of distinct product qualities, in order to promote a willingness to seek it out in the marketplace, reduce the chances of substitutability, and possibly pay a premium for it. If consumers are not aware of the advantages of purchasing a GI product, they often end up purchasing imitations or products which are passed off as a GI product. This leads to a loss for the authorised users of the GI product who may include manufacturers, producers, artisans or even distributors.

This study found that many potential consumers of biocultural products, especially those in the middle and upper middle class, are not aware of the concept of GI or of what the labelling on particular products means in terms of quality, origin etc. Unless products already have a reputation for special characteristics based on place, investments are required to create a market for these products through mass media and public awareness

<sup>35</sup> Personal Communication with a range of officials and stakeholders in the states visited in connection with this study, 2011–2014.

highlighting their speciality and essential characteristics, how they are made, who makes them and where they are made.

Obtaining a GI does not necessarily guarantee that any benefits accrued are delivered to small producers or the holders of traditional knowledge. The existing shape of supply chains and the nature of trading relationships can prevent benefits, such as additional profits, from being delivered to producers. In some cases in India, for example the Kota Doria sarees, traditional knowledge holders have the skills needed to make a product with unique characteristics, but do not have the resources to procure raw materials to weave or produce. They are therefore reliant on traders and middlemen to provide them with raw material, who in turn offer them wages or per piece labour charges and sell the products themselves. Traditional knowledge may be protected, but any economic benefits from GI status are accrued by middlemen and traders instead. In the case of Kota Doria, it is clear that the small producers or artisans – the women workers – have had to depend on the master weavers for the sale of their products and have consequently received fewer economic benefits from the GI.

Most products that qualify for registration under the GI Act use biological resources as a base. Non-timber forest produce, medicinal, aromatic and dye plants and seeds form the major ingredient of biocultural products that are eligible for obtaining GI registration. Given the limited opportunities in existing legislation, academics, practitioners and non-government agencies are exploring the possibility of registering medicinal plants and other non-timber forest produce as GIs.<sup>36</sup> The GI Act offers this opportunity under Class 31 of the fourth schedule as it classifies an item 'natural

plants'. An increased demand for such products after GI registration is likely to pose increased pressure on the biological resources used to produce them which may already be scarce. There is no evidence thus far of this conservation threat from GI products as none have been registered from this category. However, there is a plethora of data available on species lost or becoming threatened due to over-extraction for trade. Hence, sustainable collection and use and cultivation of the biological resource used are preconditions to the success of GIs as a tool to protect TK and biodiversity. At the same time, increased demand for a cultivated resource (eg traditional crop varieties) or a livestock breed that is in decline could enhance its production and hence sustainability. Another way to ensure sustainable collection is to standardise cultivation practices for significant species, or to establish checks and balances through the use of certification labels in addition to GIs, such as the Good Field Collection Practices or the Forest Stewardship Council

Other than the application filed through UNDP for a GI on a natural plant in 2015, one application was filed for the first time for a natural plant called kala jeera in 2014 by the Department of Science and Technology of the state of Himachal Pradesh. This non timber forest product is used as a condiment to season vegetables and pulses when cooked. The state is also making an attempt to promote cultivation of kala jeera. The lack of applications for GIs in the natural plants category could be due to the fact that these plants are typically collected by very poor tribal communities, who are likely to be unaware of the GI Act and its possible benefits, and who do not have the resources to apply for GI registration.

<sup>36</sup>A GEF – Government of India – UNDP project on conservation of medicinal plants aims to identify a few medicinal plants endemic to the Himalayan region having a local cultural and social value that could be considered for registration with the GI Registry for improving the conservation status of these plants, and at the same time promoting livelihoods options for local communities using sustainable harvesting techniques.



## 7

# The way forward

This study has identified a number of ways in which geographical indications in India could be made more effective as a tool to protect biocultural heritage and improve the lives of traditional knowledge holders.

However, those interested in obtaining a GI should make a thorough assessment of the potential of a product to benefit from GI status before starting the registration process. Without a strong market potential, a GI is likely to entail more economic and social costs than benefits. Ideally the product needs to show strong existing demand from consumers (either in terms of volumes of sales or higher prices relative to similar products) or strong potential demand. This demand may be due to unique flavours, appearance, special production techniques, or health attributes etc. that are rooted to a specific place – ideally one that can be neatly delineated both geographically and in terms of a degree of consistency in production, quality and so on.

Even where a great deal of market potential does exist, small producers are likely to require significant support in the following ways:

- organising themselves in a way that is most appropriate for managing the GI and production (if not they are not already organised);
- preparing applications/registrations;
- marketing the product once the GI has been obtained;
- monitoring unauthorised use of the GI; and
- challenging instances of passing off.

## Recommendations

***Simplify the application process for producers and reduce the cost:*** The GI Authority should make the application process simpler for local organisations. The authority should consider waiving the application fee for local organisations who can demonstrate financial constraints – a graded payment system based on organisational size and financial standing could ensure that GIs are accessible to poorer producer groups.

***Enhance capacity in the GI Registry office to process applications:*** The GI Registry has to add more human and financial resources. With the tool gaining popularity, the GI Registry is not only receiving more applications from within the country but from overseas as well. In order to service these applications in a timely and most efficient manner, the team needs to increase in numbers and technical expertise. The agency needs more financial resources to engage experts from time to time to validate information received through applications, and enable experts to travel to the field for validation.

***Strengthen enforcement and monitoring mechanism of the GI Registry:*** The regulatory powers of the GI Registry need to be strengthened. The officers of the GI Registry need to be given powers of checks and seizures for confiscating fakes and imitations.

***Strengthen the role of state governments in enforcement:*** State governments also have to play an important and pro-active role in protecting the intellectual property rights of authorised GI users. As an example of good practice, action has been taken

by the state government of Karnataka by publishing a legal notice in the local news dailies announcing penal action against all traders and outlets selling any silk that is being passed off as 'Mysore silk'. Mysore silk sarees are very popular in India and a real Mysore silk sari costs over Indian Rs. 25,000 (approximately US\$410<sup>37</sup>) though imitations in cheaper silk material are easily found at a much lower price. This was affecting the sales of traders selling genuine Mysore silk sarees. In addition to publishing the notice, the government carried out on-the-spot checks and seizures. This positive action by the government showed immediate results in improving sales of Mysore silk sarees, as the imitations were removed from the shelves. Similarly, Chanderi is also a very popular and exclusive fabric made in central India. Many outlets sell cheaper imitations as Chanderi, thus affecting the sales of authentic Chanderi. A notice from the relevant authorities to some outlets saw the withdrawal of cheaper imitations of the material, increased the goodwill of such shops, and saw a rapid increase in the turnover of these outlets.

**Strengthen quality control and labelling to verify authenticity:** The GI Act should provide for adequate quality control, and require GI products to carry certification labels to assure the consumer of their purchase of authentic goods. For example, the Ministry of Commerce has set up the Pashmina Testing and Quality Certification Centre (PTQCC) with financial assistance from the ASIDE scheme of the Ministry. The PTQCC shall provide services related to technical testing and quality certification of genuine handmade Pashmina goods as well as undertake research and development work for the expansion and growth of the Pashmina industry of the State of Jammu and Kashmir. In order to ensure sale of authentic products, the Secure Fusion Authentication Labels (SFAL) shall be used for certification of genuine 'Kashmir Pashmina'. Under this certification, two labels have been introduced – a covert (hidden – readable under UV light) and overt (visible to naked eye). In addition, a unique number for tracking and records purposes will be introduced. Each label will carry invisible nano particles known as microtaggant (detectable under infrared light) having a unique code formulated specially for Kashmir Pashminas. The APEDA has recently set up the Basmati Rice Board with a similar purpose. This kind of support is extremely helpful in promoting the cause of GI-registered products.

**Enhance consumer awareness about GI products:** It is important to promote the concept of GIs among consumers so that they understand its significance in the marketplace as a mark of authenticity. The government could, for example, promote participation of GI products in fairs and exhibitions both in India and overseas. Displays at all the international airports in

India, mainly for foreign visitors, and at railway stations, metro stations and important public spaces, year round but also especially during the onset of key festivals and exhibitions, could be one format for this marketing. This is already being done to some extent, but investments need to be made in the quality of that marketing – to be more creative and convincing to the potential consumer.

**Develop a mechanism to ensure fair benefit sharing/distribution:** In many cases of GI products in India the small-scale producers and traditional knowledge holders do not get remunerated for their special expertise or knowledge. Other, more powerful actors in the supply chain, such as plantation owners, bottlers, middlemen and traders, who effectively control production and trade or employ knowledge holders as wage labourers – are able to obtain any benefits from the GI status. One option could be for the GI Authority to implement a mechanism similar to that developed by the Fairtrade Labelling Organisation (FLO), to ensure that the small producer or wage labourer whose traditional knowledge contributes to the special qualities recognised by the GI and is valued by the consumer, receives a premium or a fair price.

**Enhance support for small-scale producers from a range of players:** The government of India, as well as donors and NGOs, should provide particular support to enable local associations representing traditional producers to register GIs for their biocultural products directly so that they can capture the full benefits. This includes technical and financial support to help poor communities assess and enhance the market potential for their products, understand the GI requirements, establish and register local organisations, complete the paperwork and application process, and monitor and enforce the GI once granted.

Several state governments in India are making efforts to ensure that the artisans and farmers who have obtained GIs on their products are able to reap benefits from the production and sale of their products. The government of Karnataka has created special manufacturing parks and provided artisans with space to work and produce and sell their wares.

GIs are suitable for protecting unique biocultural products linked to particular cultural practices and geographical areas/landscapes. They could help traditional producers to capture the full economic benefits from their products, rather than waiting for possible benefit-sharing from their economic use by others. However, GI registration and enforcement poses significant financial and bureaucratic challenges for small-scale producers. Hence it may be best to first establish a market for these products, and only seek GIs for established products which are likely to benefit most.

<sup>37</sup> Exchange rate on 8<sup>th</sup> Sept 2014, as provided by Citibank N.A via Google converter.

# References

- Bhattacharya, S (2014) Bioprospecting, Biopiracy and Food Security in India: The Emerging Sides of Neoliberalism. *International Letters of Social and Humanistic Sciences* Vol 23 (2014) pp 49–56: Online 2014-03-02. SciPress Ltd., Switzerland.
- CUTS International (2010) Geographical Indications in India: A Case Study of Kota Doria. Briefing paper. CUTS CITEE GRANITE II – 1/2010.
- Das, NK (2003) Protection of Darjeeling Tea. Paper presented at the WIPO Symposium on GIs, San Francisco, July 2003.
- Dotta, TK (undated) Darjeeling Tea, India. [www.fao.org/docrep/013/i1592e/i1592e03.pdf](http://www.fao.org/docrep/013/i1592e/i1592e03.pdf)
- Dutfield, G (2011) Intellectual Property Tools for Products Based on Biocultural Heritage: A legal review of geographical indications, trademarks and protection from unfair competition. IIED, London.
- Dutta, I (2012) GI Tag to Boost Darjeeling Tea Exports. *The Hindu*, India. [www.thehindu.com/business/industry/gi-tag-to-boost-darjeeling-tea-exports/article2803987.ece](http://www.thehindu.com/business/industry/gi-tag-to-boost-darjeeling-tea-exports/article2803987.ece)
- Gervais, D (2008) *The TRIPS Agreement: Drafting History and Analysis*
- Nair, L and Kumar, R (2005) *Geographical Indications: A Search for Identity*. Lexis Nexis Butterworths. New Delhi
- Pant, R (2008) Protection and Empowerment of Indigenous Plant Breeder Communities in India. PhD Thesis. Jawaharlal Nehru University, New Delhi.
- Rangneker, D (2009) Geographical indications and localisation of Feni, CSGR Report, University of Warwick. [www2.warwick.ac.uk/fac/soc/csgr/research/projects/2007/protecting\\_feni/proj\\_pbl/esrc\\_report\\_english.pdf](http://www2.warwick.ac.uk/fac/soc/csgr/research/projects/2007/protecting_feni/proj_pbl/esrc_report_english.pdf) Accessed April 2015.
- Ravindran, S and Mathew, A (2009) The Protection of Geographical Indication in India – Case Study on Darjeeling Tea. Intellectual Property Rights Index 2009 Report, Altacit Global.
- Sahai, S, Kumar, U and Ahmed, W (2005) *Indigenous Knowledge: Issues for Developing Countries*. Gene Campaign. Delhi.
- Siingh, P and Seth, D (2011) Traditional knowledge and Geographical Indications: Fighting Back. *Managing Intellectual Property*. The Global IP Resource. [www.managingip.com/Article/2897199/Traditional-knowledge-and-geographical-indications-Fighting-back.html](http://www.managingip.com/Article/2897199/Traditional-knowledge-and-geographical-indications-Fighting-back.html)
- Subbiah, S (undated) Reaping what they sow: the basmati rice controversy and strategies for protecting traditional knowledge. Available at: [www.bc.edu/dam/files/schools/law/lawreviews/journals/bciclrl/27\\_2/12\\_TXT.htm](http://www.bc.edu/dam/files/schools/law/lawreviews/journals/bciclrl/27_2/12_TXT.htm). Accessed September 2014.
- Sugden, J (2012) Go with the grain. *Financial Times*. 17 November 2012.
- UNESCO (2003) 'Language, vitality and endangerment.' Document submitted by Ad Hoc Expert Group on Endangered Languages to the International Expert Meeting on UNESCO Programme Safeguarding of Endangered Languages, UNESCO Paris, 10th–12th March 2003.
- Zografos, D (2008) *Geographical Indications and Socio-Economic Development*. Working Paper 3. IQsensato, UK.

Geographical indications (GIs) can help communities promote and protect markets for their biocultural products, and are gaining popularity globally as a tool for the protection and promotion of traditional knowledge. GIs specify the geographical origin of a product and link it with its essential qualities that are due to its place of origin. There are almost 200 registered biocultural products originating in India, covering a range of products from agricultural, handicrafts, manufactured goods, textiles and food stuff. This Working Paper outlines five case studies in India and seeks to explore the hypothesis that GIs can protect traditional knowledge and biocultural heritage.

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