

Unit-III

Legal framework and Traditional Knowledge

1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,
2. Plant Varieties Protection and Farmers Rights Act, 2001 (PPVFR Act);
3. The Biological Diversity Act 2002 and Rules 2004,
4. the protection of traditional knowledge bill, 2016.
5. Geographical indications act 2003.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,

To address the adverse living conditions of many tribal families living in forests was on account of non-recognition and vesting of pre-existing rights, a landmark legislation viz. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, has been enacted to recognize and vest the forest rights and occupation of forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers, who have been residing in such forests for generations, but whose rights could not be recorded.

This Act not only recognizes the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood, but also grants several other rights to ensure their control over forest resources which, inter-alia, include right of ownership, access to collect, use and dispose of minor forest produce, community rights such as nistar; habitat rights for primitive tribal groups and pre-agricultural communities; right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

The Act also provides for diversion of forest land for public utility facilities managed by the Government, such as schools, dispensaries, fair price shops, electricity and telecommunication lines, water tanks, etc. with the recommendation of Gram Sabhas. In addition, several schemes have been implemented by the Ministry of Tribal Affairs for the benefit of tribal people, including those in the forest areas such as "Mechanism for marketing of Minor Forest Produce (MFP) through Minimum Support Price (MSP) and development of Value Chain for MFP". Funds are released out of Special Central Assistance to Tribal Sub Plan for infrastructure work relating to basic services and facilities viz. approach roads, healthcare, primary education, minor irrigation, rainwater harvesting, drinking water, sanitation, community halls, etc. for development of forest villages.

Under Section 3(1)(h) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the rights of settlement and conversion of all forest villages, old habitations, un-surveyed villages and other villages in forest, whether recorded,

notified, or not, into revenue villages have been recognized as one of the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands.

As per the provisions of the Act and the rules framed thereunder, the forest right related to conversion of forest villages into revenue villages is to be adjudicated by the Gram Sabha, Sub-Divisional Level Committee and the District Level Committee as per the laid down procedure, like any other forest right specified in the Act. The Ministry of Tribal Affairs has issued guidelines on 8.11.2013, inter-alia, impressing upon all the State/ UT Governments to convert all such erstwhile forest villages, un-recorded settlements and old habitations into revenue villages with a sense of urgency in a time bound manner. The conversion would include the actual land use of the village in its entirety, including land required for current or future community uses, like, schools, health facilities, public spaces etc.

Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers

- 1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—
 - a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
 - b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.
- 2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely
 - a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
 - b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
 - c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
 - d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
 - e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

- f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package: Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.
- 3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.
- 4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.
- 5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.
- 6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.
- 7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980 (69 of 1980), requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.
- 8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

Duties of holders of forest rights

The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

- (a) protect the wild life, forest and biodiversity;
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

Offences And Penalties

1. ***Offences by members or officers of authorities and Committees under this Act.***—Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees: Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
2. ***Cognizance of offences***—No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Plant Varieties Protection and Farmers Rights Act, 2001 (PPVFR Act)

The Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act) is an Act of the Parliament of India that was enacted to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants. This act received the assent of the President of India on the 30 October 2001.

A variety of plant is eligible for registration under the Act if it essentially fulfills the criteria of Distinctiveness, Uniformity and Stability (DUS). The Central Government issues notification in official Gazettes specifying the genera and species for the purpose of registration of varieties. So far, the Central Government has notified 157 crop species for the purpose of registration.

The PPV&FR Act, 2001 was enacted to grant intellectual property rights to plant breeders, researchers and farmers who have developed any new or extant plant varieties. The Intellectual Property Right granted under PPV & FR Act, 2001 is a dual right – one is for the variety and the other is for the denomination assigned to it by the breeder. The rights granted under this Act are heritable and assignable and only registration of a plant variety confers the right. Essentially Derived Varieties (EDV) can also be registered under this Act and it may be new or extant. Farmers are entitled to save, use, sow, re-sow, exchange or sell their farm produce including seed of a registered variety in an unbranded manner. Farmers' varieties are eligible for registration and farmers are totally exempted from payment of any fee in any proceedings under this Act. The period of protection for field crops is 15 years and for trees and vines is 18 years and for notified

varieties it is 15 years from the date of notification under section 5 of Seeds Act, 1966. Annual fee has to be paid every year for maintaining the registration and renewal fee has to be paid for the extended period of registration. Farmers can claim for compensation if the registered variety fails to provide expected performance under given conditions. The rights granted under this Act are exclusive right to produce, sell, market, distribute, import and export the variety. Civil and criminal remedies are provided for enforcement of breeders' rights and provisions relating to benefit sharing and compulsory licence in case registered variety is not made available to the public at reasonable price are provided. Compensation is also provided for village or rural communities if any registered variety has been developed using any variety in whose evolution such village or local community has contributed significantly. The procedural details and modes of implementing this Act are provided in PPV&FR Rules, 2003. In the present article, we are discussing some of the important legal provisions of this Act along with some of the case studies.

Objectives of the PPV & FR Act, 2001

1. To establish an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.
2. To recognize and protect the rights of farmers in respect of their contributions made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.
3. To accelerate agricultural development in the country, protect plant breeders' rights; stimulate investment for research and development both in public & private sector for the development new of plant varieties.
4. Facilitate the growth of seed industry in the country which will ensure the availability of high-quality seeds and planting material to the farmers.

Rights Under the Act

1. **Breeders' Rights:** Breeders will have exclusive rights to produce, sell, market, distribute, import or export the protected variety. Breeder can appoint agent/ licensee and may exercise for civil remedy in case of infringement of rights.
2. **Researchers' Rights:** Researcher can use any of the registered variety under the Act for conducting experiment or research. This includes the use of a variety as an initial source of variety for the purpose of developing another variety but repeated use needs prior permission of the registered breeder.
3. **Farmers' Rights**
 - A farmer who has evolved or developed a new variety is entitled for registration and protection in like manner as a breeder of a variety;
 - Farmers variety can also be registered as an extant variety;
 - A farmer can save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the PPV&FR Act, 2001 in the same manner as he was entitled before the coming into force of this Act provided farmer

shall not be entitled to sell branded seed of a variety protected under the PPV&FR Act, 2001;

- Farmers are eligible for recognition and rewards for the conservation of Plant Genetic Resources of land races and wild relatives of economic plants;
- There is also a provision for compensation to the farmers for non-performance of variety under Section 39 (2) of the Act, 2001 and
- Farmer shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under the Act.

Implementation of the Act

To implement the provisions of the Act the Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare established the Protection of Plant Varieties and Farmers' Rights Authority on 11th November, 2005. The Chairperson is the Chief Executive of the Authority. Besides the Chairperson, the Authority has 15 members, as notified by the Government of India (GOI). Eight of them are ex-officio members representing various Departments/ Ministries, three from SAUs and the State Governments, one representative each for farmers, tribal organization, seed industry and women organization associated with agricultural activities are nominated by the Central Government. The Registrar General is the ex-officio Member Secretary of the Authority.

General Functions of the Authority

1. Registration of new plant varieties, essentially derived varieties (EDV), extant varieties;
2. Developing DUS (Distinctiveness, Uniformity and Stability) test guidelines for new plant species;
3. Developing characterization and documentation of varieties registered;
4. Compulsory cataloging facilities for all variety of plants;
5. Documentation, indexing and cataloguing of farmers' varieties;
6. Recognizing and rewarding farmers, community of farmers, particularly tribal and rural community engaged in conservation and improvement;
7. Preservation of plant genetic resources of economic plants and their wild relatives;
8. Maintenance of the National Register of Plant Varieties and
9. Maintenance of National Gene Bank.

Plant Varieties Protection Appellate Tribunal

There is transitory provision by which it is provided that till the PVPAT is established the Intellectual Property Appellate Board (IPAB) will exercise the jurisdiction of PVPAT. Consequently, the Plant Varieties Protection Appellate Tribunal (PVPAT) has been established by appointing Technical Member. All orders or decisions of the Registrar of Authority relating to registration of variety and orders or decisions of the Registrar relating to registration as agent or licensee can be appealed in the Tribunal. Further, all orders or decisions of Authority relating to benefit sharing, revocation of compulsory license and payment of compensation can also be

appealed in the Tribunal. The decisions of the PVPAT can be challenged in High Court. The Tribunal shall dispose of the appeal within one year.

The Biological Diversity Act 2002 and Rules 2004

The Biological Diversity Act 2002 is a law meant to achieve three main objectives:

- The conservation of biodiversity;
- The sustainable use of biological resources;
- Equity in sharing benefits from such use of resources.

Its key provisions aimed at achieving the above are:

1. Prohibition on transfer of Indian genetic material outside the country, without specific approval of the Indian Government;
2. Prohibition on anyone claiming an Intellectual Property Right (IPR), such as a patent, over biodiversity or related knowledge, without permission of the Indian Government;
3. Regulation of collection and use of biodiversity by Indian nationals, while exempting local communities from such restrictions;
4. Measures for sharing of benefits from the use of biodiversity, including transfer of technology, monetary returns, joint Research & Development, joint IPR ownership, etc.;
5. Measures to conserve and sustainably use biological resources, including habitat and species protection, environmental impact assessments (EIAs) of projects, integration of biodiversity into the plans, programmes, and policies of various departments/sectors;
6. Provisions for local communities to have a say in the use of their resources and knowledge, and to charge fees for this;
7. Protection of indigenous or traditional knowledge, through appropriate laws or other measures such as registration of such knowledge;
8. Regulation of the use of genetically modified organisms;
9. Setting up of National, State, and Local Biodiversity Funds, to be used to support conservation and benefit-sharing;
10. Setting up of Biodiversity Management Committees (BMC) at local village level, State Biodiversity Boards (SBB) at state level, and a National Biodiversity Authority (NBA).

While some of the above provisions are progressive, there remain important weaknesses, including the following:

1. It exempts those plants that are registered under the Protection of Plant Varieties and Farmers' Rights (PVPFR) Act, 2001. This Act provides corporations and scientists who are breeding new varieties of crops, to gain intellectual property rights (see more on the relationship between the Biodiversity and Plant Varieties laws, below). Such an exemption means that the progressive provisions listed above, many of which are absent from the PVPFR Act, would not apply to plant varieties registered under PVPFR Act.
2. It does not provide citizens the power to directly approach the courts; such power is restricted to an appeal in the High Court against any order by the NBA or the SBB.

3. It is unnecessarily soft on Indian corporate and other entities, requiring only "prior intimation" to a SBB for the commercial use of bioresources, rather than permission from the NBA as in the case of foreigners. This is unjustified, given that Indians (especially industrial corporations) are not necessarily any more responsible towards the environment or towards local communities, also some Indian companies could just be local fronts for foreign enterprises.
4. It does not fully empower local communities, to protect their resources and knowledge from being misused, or to generate benefits (except charging collection fees). It has very weak or no representation of local community members on the State Biodiversity Boards or National Biodiversity Authority.
5. The power of declaring a Biodiversity Heritage Sites lies with the state government (Article 37 of the Act): It is important that the heritage sites should be designated only after consultation and moreover consent of the affected communities. Further, these should be in the control/management of local communities, and the provision for compensation made in the State Biodiversity Fund (see Section 32) be applied only where there is a mutually agreed to dislocation/curbing of rights. Else we will have the people-parks conflict recurring in another form, as decisions for which areas need to be conserved would be top-down.

Several organisations and people feel that the basic framework of the Act is problematic, since it accepts intellectual property rights on biodiversity, could be used to further commercialise biodiversity, and does not truly empower communities. Others feel that the Act provides some potential for checking biopiracy, achieving conservation, and facilitating community action. They stress that a combination of strong rules, and amendments related to the above points, would help strengthen this potential.

Biological Diversity Rules 2004

There was hope that Rules under the Act would strengthen the provisions on conservation, sustainable use, and equity. Unfortunately, that hope was shattered when the government notified the Biological Diversity Rules 2004 on 15th April.

The Biodiversity Rules are the executive orders made by the Government in order to carry out the purposes of the Act (Section 62).

The Rules among other things outline the procedures to be followed for access to biological resources (wild plants and animals, crops, medicinal plants, livestock, etc.), their commercial utilization, transfer of rights of research, and intellectual property rights related to biodiversity. From the point of view of local communities, it is important to understand the process of allowing access/utilization of bioresources and also the role of communities. Presented below is a diagrammatic representation of the same.

It is keeping this in mind that we need to look at some provisions directly relevant to local communities, the most critical of them being the Biodiversity Management Committee (BMC).

Section 41 of the Act states: “Sec 41(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity”.

Under the Biodiversity Rule, Sec 22 expands on constitution and role of Biodiversity Management Committees, and states:

1. Every local body shall constitute a Biodiversity Management Committee (BMCs) within its area of jurisdiction.
2. The main function of the BMC is to prepare People’s Biodiversity Register (PBR) in consultation with local people (this is a comedown from the broader role envisaged in Sec 41 of the Act. The Register is supposed to contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them) (italics ours).
3. The other functions of the BMC are to advise on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local voids and practitioners using the biological resources.

Therefore, the role for BMCs defined in the Biodiversity Rules are a complete comedown from what was envisaged in the Biodiversity Act, which itself had its own set of problems. Some of the critical problems both from the Act and Rules are:

Constitution of the Biodiversity Management Committees (BMC)

1. The definition of local body is problematic, as it leaves out *Gram Sabha* or other village assemblies. Since the local body has to appoint/select the BMC, the political affiliation and relationship between a village and the panchayat body will play an important role in the constitution and functioning of the BMC.
2. The process of local body constituting BMC, is by nomination. Rules 22(2) & (3) expressly mention that the members will be NOMINATED by the local body & the Chairperson will be ELECTED by the committee, then the BMC could become another power center and might not actually function to conserve biodiversity or protect community rights.

Focus of work and functioning

1. The Act clearly spells out a list of functions for the BMC, among which are promoting conservation and maintaining PBR. The Rule dilutes this and states that the main role is to merely maintain PBR.
2. Peoples Biodiversity Register: The Peoples Biodiversity Register (PBR) is a document that records the diversity of species of flora, fauna, crops, livestock etc. As on date, there is no legal protection available for the knowledge recorded in the PBR. This is problematic when it comes to the question of access to this document. Even though communities create and maintain a database of their resources of knowledge, there is no or requirement that their consent would sought when it comes to accessing the information in the PBRs. Although

Rule 17 says local bodies will be consulted before approval for access to bio resources is given, the definition of “consult” is not clear and in many cases it might remain a mere formality.

3. Though the Act clearly has spelt out criteria for rejecting applications, it has not listed community consent as one of them. Rule 7 is clearly biased, as it gives BMC only an advisory role in the of grant approvals.

The Protection of Traditional Knowledge Bill, 2016

An Act to provide for a transparent legal framework for the protection of, access to, and use of, traditional knowledge, genetic resources and expressions of folklore, which also guarantees equitable sharing of benefits and effective participation of holders.

The main objectives of the act are as follows

- **Preserve:** Functions of the National Authority OR State Board shall be only limited to identifying the traditional knowledge and marking the same to the right community (Identifying the right custodian/owner).
- **Protect:** There shall be a separate autonomous institution having quasi-judicial powers like that of Competition Commission of India or Intellectual Property Appellate Tribunal to enforce the provisions in connection with the protection of traditional knowledge. Any dispute in connection with the misappropriation of traditional knowledge shall be heard by such *Commission on Indian Traditional Knowledge*.
- **Promote:** Promoting traditional knowledge is altogether a different activity. Thus, there shall be a different autonomous institution consisting of qualified persons consisting of scientists, professionals from finance, marketing, law etc. constituted for the promotion of the traditional knowledge addressing the scope of research activities as well as the economic exploitation. This wing shall function with a *profit motive* and the income generated by exploiting the traditional knowledge shall be proportionately shared among the custodian/owners of such knowledge as identified by the National Authority or the State Board. Further, this wing shall act as a bridge between the indigenous people who is actually practicing the TK and different institutions formed under the Traditional knowledge bill for the protection of traditional knowledge. It shall also carry out various awareness programs on the rights of the TK owners and shall act as a *trustee of the Indian traditional knowledge* for the benefit of the actual TK owners.

Scope of The Act

The Act protects

- (a) A holder against infringement of the holder's rights in relation to traditional knowledge, genetic resources and expressions of folklore;
- (b) Traditional knowledge and expressions of folklore against misappropriation, misuse and unlawful exploitation;
- (c) An equitable balance between the rights and interests of holders and users;

- (d) Genetic resources found *in situ* and *ex situ*¹ against misappropriation and illegal exploitation;
- (e) Improper grant and exercise of intellectual property rights in traditional knowledge, genetic resources and expressions of folklore.

Who will own the rights of Traditional Knowledge?

Either *State Government or the Central Government* shall be the custodian of the traditional knowledge which is derived or practised within its territorial jurisdiction. Instead of the term *ownership*, Honourable Member of Parliament used the term *custodian*. Further, the respective government reserves the right to transfer the custodianship.

Apart from placing the State/Central Government as the owner/custodian of the whole traditional knowledge, which is derived or practised within its territorial jurisdiction, respective governments shall be the owner of such knowledge, whose practice sustains the livelihoods of many persons scattered across the territory of India, and which does not have a specific community or institution or family as custodian. On the other side, the knowledge which is preserved and practised by specific community or institution or a family, then such community or institution or the family shall be the owner or custodian of such knowledge.

However, respective government shall act as the trustee of traditional knowledge for its *preservation, protection and promotion*, where it shall *suo motu*² recognise the ownership of traditional knowledge of respective communities and giving an opportunity of public opposition in case of wrongly identified custodians of traditional knowledge. Provided, the onus of proof shall lie on such person or group of persons who are raising such objection. Strict guidelines shall be implemented in this regard. Either TKDL or TKDS facility or both shall be adopted for this purpose.

Geographical Indications Act 2003

Every region has its claim to fame. Christopher Columbus sailed from Europe to chart out a new route to capture the wealth of rich Indian spices. English breeders imported Arabian horses to sire Derby winners. China silk, Dhaka muslin, Venetian Glass all were much sought-after treasures. Each reputation was carefully built up and painstakingly maintained by the masters of that region, combining the best of Nature and Man, traditionally handed over from one generation to the next for centuries. Gradually, a specific link between the goods and place of production evolved resulting in growth of Geographical Indications (GIs).

What is a Geographical Indication?

- It is an indication
- It originates from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods

¹ The process of protecting an endangered plant or animal species in its natural habitat is commonly known as *in situ* conservation. On the other hand, *ex situ* conservation is the relocation of endangered or rare species from their natural habitats to protected areas equipped for their protection and preservation.

² meaning "**on its own motion**" is an Indian legal term, relating to an action taken by a court of its own accord, without any request by the parties involved.

- The manufactured goods should be produced or processed or prepared in that territory.
- It should have a special quality or reputation or other characteristics

Examples of possible Indian Geographical Indications.

- Andhra Pradesh Araku Valley Arabica Coffee, Kondapalli Bommallu, Tirupathi Laddu
- Odisha Rasagola, Sambalpuri sharee, Berhampuri patto
- Tamilnadu Alleppey Green Cardamom, Malabar Pepper Darjeeling Tea
- Kanchipuram silk saree
- Nagpur Orange
- Kolhapuri Chappal
- Agra Petha

In December 1999, the Parliament had passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Act would be administered by the Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications. The Geographical Indications Registry would be located at Chennai. The Act has come into force with effect from 15th September 2003.

Benefit of Registration of Geographical Indications?

- It confers legal protection to Geographical Indications in India
- Prevents unauthorised use of a Registered Geographical Indication by others
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory.

Geographical Indications that are not Registrable?

For registrability, the indications must fall within the scope of section 2(1)e of GI Act, 1999. Being so, it has to also satisfy the provisions of section 9, which prohibits registration of a Geographical Indication.

- The use of which would be likely to deceive or cause confusion; or
- The use of which would be contrary to any law for the time being in force; or
- Which comprises or contains scandalous or obscene matter; or
- Which comprises or contains any matter likely to hurt the time being in force; religious susceptibilities of any class or section of the citizens of India; or
- Which would otherwise be dismantled to protection in a court; or

- Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country; or
- Which although literally true as to the territory region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality as the case may be.

Explanation 1 to section 9 says that for the purposes of this section, “*generic names of indications*” in relation to goods which although relates to the place of the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for an indication of the kind, nature, type of other property or characteristic of the goods.

Explanation 2 further says a that “*in determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.*”

Who can apply for the registration of a geographical indication?

- Any association of persons, producers, organisation or authority established by or under the law can apply.
 - The applicant must represent the interest of the producers
 - The application should be in writing in the prescribed form
 - The application should be addressed to the Registrar of Geographical Indications along with prescribed fee.

Who is a registered proprietor of a geographical indication?

- Any association of persons, producers, organisation or authority established by or under the law can be a registered proprietor.
- Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

Who is an authorised user?

- A producer of goods can apply for registration as an authorised user
- It must be in respect of a registered geographical indication
- He should apply in writing in the prescribed form along with prescribed fee

Who is a producer in relation to a Geographical Indication?

- The persons dealing with three categories of goods are covered under the term Producer:
 - Agricultural Goods includes the production, processing, trading or dealing

- Natural Goods includes exploiting, trading or dealing
- Handicrafts or Industrial goods includes making, manufacturing, trading or dealing.

Some other important aspects relating to GI:

- Registration of a geographical indication is not compulsory; however, registration affords better legal protection to facilitate an action for infringement. The registered proprietor and authorised users can initiate infringement actions. The authorised users can exercise the exclusive right to use the geographical indication.
- An authorised user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered.
- The registration of a geographical indication is valid for a period of 10 years
- It can be renewed from time to time for further period of 10 years each.
- If a registered geographical indication is not renewed it is liable to be removed from the register.
- A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. However, when an authorised user dies, his right devolves on his successor in title.
- The Appellate Board or the Registrar of Geographical Indications has the power to remove the geographical indication or an authorised user from the register. Further, on application by an aggrieved person action can be taken.

Infringement of a registered Geographical Indication:

When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods. When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication. When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

Geographical Indication v/s Trademark?

A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises. Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Questions:

1. Write a short note on the legal framework of traditional knowledge?

2. What are the objectives of framing the scheduled tribes and other traditional forest dwellers act 2006? Explain its legal framework?
3. What is Plant Varieties Protection and Farmers Rights Act, 2001? How it helps in preserving the plant varieties through different rights under the act?
4. Outline the provisions under the biodiversity act 2002? What are weaknesses of the act.
5. Write a short note on biological diversity rules 2004.
6. What is the need of the Protection of Traditional Knowledge Bill, 2016? Explain the rights of the TK owner according to the bill?
7. What is GI? Explain the benefits and different aspects of GI?
8. Is a registration of a geographical indication compulsory and how does it help the applicant?
9. How a geographical indication is different from a trade mark?