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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GEOGRAPHICAL INDICATIONS AND THE POLITICS OF AUTHENTICITY: WHOSE HERITAGE, WHOSE RIGHTS?

AUTHORED BY - VIMALA MARY.A & ASHELLE DEYONA D'SOUZA

Abstract

Geographical Indications (GIs) are intellectual property rights designed to protect products originating from a specific region, where a given quality, reputation, or other characteristic is essentially attributable to its geographical origin. While framed as a tool for rural development and heritage preservation, the implementation of GIs is deeply entangled in complex political and social struggles over authenticity, ownership, and value distribution. This research critically examines the contention that GIs are a neutral, beneficial form of protection. Instead, it argues that the GI framework often becomes a site of conflict where powerful state and market actors co-opt collective heritage, potentially marginalizing the very communities especially small-scale producers, indigenous groups, and traditional knowledge holders the system purports to empower. The study adopts a comparative case study approach, analyzing prominent Indian GIs alongside European counterparts to uncover the dynamics of inclusion and exclusion within GI governance structures. It investigates how definitions of "authenticity" are constructed, by whom, and to whose benefit. The research is grounded in an analysis of international legal frameworks, including the TRIPS Agreement and the Lisbon System, to assess how global standards are domesticated into national contexts with varying power asymmetries. Ultimately, this project seeks to move beyond a techno-legal analysis of GIs to provide a critical socio-legal perspective on the power relations inherent in defining and commodifying cultural heritage and territorial identity.

Keywords:- Geographical Indications, politics of authenticity, heritage appropriation, socio-legal governance, equitable benefit-sharing.

1: Introduction

1.1. Background: The Rise of Geographical Indications in Global Trade

Geographical Indications (GIs) have transitioned from local customary practices to a formal category of intellectual property rights embedded in the global trading system, primarily through the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹ The discourse surrounding GIs often highlights their dual potential: to stimulate rural development by securing premium markets for local producers and to act as a bulwark against cultural homogenization by preserving traditional knowledge and practices.²

1.2. Statement of the Research Problem

Despite the promising narrative, the implementation of GI systems is fraught with contention. The process of legally defining a GI is delineating its geographical boundaries, codifying "authentic" production methods, and identifying legitimate producers is inherently political and seldom neutral.³ This research problematizes the assumption that GIs are an unequivocal good for communities. Instead, it investigates how this legal framework can become an arena where powerful state institutions, export-oriented syndicates, and other well-resourced actors co-opt collective heritage. This often results in the marginalization of the very small-scale producers,

1.3. Research Hypothesis

The central hypothesis of this research is that the governance of Geographical Indications constitutes a political field where powerful actors strategically construct and impose contested definitions of authenticity. This process functions as a mechanism of exclusion, systematically marginalizing legitimate community participants and enabling the inequitable appropriation of both economic and cultural value.

1.4. Research Objectives and Questions

The study is guided by the following objectives: to deconstruct the legal and political processes defining authenticity within GI governance; to evaluate the capacity of existing legal frameworks to ensure equitable participation and benefit-sharing; to identify patterns of conflict in Indian and EU cases; and to propose normative reforms. These objectives are

¹Agreement on Trade-Related Aspects of Intellectual Property Rights [1994] 1869 UNTS 299 (TRIPS).

²International Trade Centre (ITC), *Guide to Geographical Indications: Linking Products and Their Origins* (2017) 7 <www.intracen.org/resources/publications/guide-to-geographical-indications-linking-products-and-their-origins> accessed 15 September 2025.

³Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014) 105.

operationalized through three primary research questions concerning the construction of authenticity, the extent of equitable outcomes, and pathways for reform.

1.5. Scope and Delimitations of the Study

This research employs a socio-legal and comparative approach, focusing on the period from the early 2000s, following the implementation of the TRIPS Agreement and India's Geographical Indications Act (1999), to the present. The geographical scope centres on a selection of Indian GIs, with comparative analysis drawn from key European Union cases. The study is delimited to the analysis of legal texts, policy documents, published GI application dossiers, and secondary scholarly literature.

1.6. Significance of the Research

This study contributes to a critical strand of socio-legal scholarship by moving beyond a technocratic analysis of GI laws to interrogate the power relations they engender and sustain.⁴ It provides a nuanced understanding of how cultural heritage and territorial identity are commodified through legal mechanisms, with implications for designing more equitable intellectual property and cultural policy frameworks.

1.7. Methodology: A Comparative Socio-Legal Approach

The methodology combines comparative case study analysis with socio-legal critique.⁵ It involves a critical examination of international legal instruments (TRIPS, Lisbon Agreement), national legislations (Indian GI Act, EU Regulations), and specific GI case files. The "socio-legal" aspect entails analysing law as a social phenomenon, deeply intertwined with power dynamics, rather than as an autonomous set of rules.⁶

2: Theoretical Framework and Literature Review

2.1. Intellectual Property beyond Incentives: A Critical Perspective

Critical scholarship challenges the orthodox view of intellectual property (IP) as a neutral incentive for innovation. Instead, it frames IP rights as social relations that can allocate power

⁴Aaron Glass, 'The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law by Rosemary Coombe (Review)' (2014) 48 *PoLAR* 155, 156 <https://www.researchgate.net/publication/259502897> accessed 15 September 2025.

⁵John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3rd edn, SAGE 2009) 5.

⁶David Cowan and Daniel Wincott, *Exploring the "Legal" in Socio-Legal Studies* (Palgrave Macmillan 2015) 5.

and reinforce existing socio-economic hierarchies.⁷

2.2. The Politics of Authenticity: Social Construction and Power

The concept of "authenticity" is not an inherent quality but is socially constructed through processes of negotiation and power struggles.⁸ Scholars argue that authenticity is a claim that is made, validated, and contested within specific social and institutional contexts.⁹ Applying this lens to GIs reveals that the legal definition of an "authentic" product is a political act, not a simple recording of fact.

2.3. Heritage as a Contested Resource: Cultural Appropriation and Commodification

When traditional knowledge and cultural heritage are linked to products with commercial potential, they become "resources" that are often contested.¹⁰ The literature on cultural appropriation examines how elements of a subordinate culture are taken up by a dominant culture without permission or fair compensation, often stripping them of their original meaning and context.¹¹ GI regimes, by commodifying heritage, can become sites where such appropriation is either challenged or institutionalized.

2.4. Governance and Power: Actor-Network Theory and Institutional Analysis

Actor-Network Theory (ANT) provides a useful framework for mapping the complex networks of human actors (producers, state officials, lawyers) and non-human actors (legal texts, soil, climate, the product itself) that constitute a GI.¹² Complementing this, institutional analysis helps decipher the formal and informal rules that govern behaviour within these networks, highlighting how institutions can create path dependencies and power asymmetries.¹³

2.5. Review of Literature on GIs: From Economic Tools to Sites of Conflict

The literature on GIs is vast. A significant body of work, often supported by international organizations and the EU, promotes GIs as tools for rural development and quality

⁷Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (Earthscan 2002) 5.

⁸ Richard A. Peterson, 'In Search of Authenticity' (2005) 20(1) *Journal of Management Studies* 1083, 1085.

⁹ Charles Lindholm, *Culture and Authenticity* (Blackwell Publishing 2008) 2..

¹⁰ Michael F Brown, *Who Owns Native Culture?* (Harvard University Press 2003) 87.

¹¹ James O. Young, *Cultural Appropriation and the Arts* (Wiley-Blackwell 2008) 5

¹²Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (OUP 2005) 124.

¹³Elinor Ostrom, 'Understanding Institutional Diversity' (2005) 1(1) *European Journal of Law and Economics* 3, 15.

differentiation.¹⁴ However, a growing critical scholarship documents the conflicts and exclusionary outcomes associated with GIs. This includes studies on how GIs can marginalize small producers within Europe¹⁵ and how the transplantation of the GI model to countries like India creates new forms of dispossession.¹⁶

3: The Global Architecture of GI Protection: From TRIPS to National Implementation

3.1. The TRIPS Agreement: Defining GIs in International Law

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represents the cornerstone of international GI protection, integrating them into the multilateral trading system. Articles 22-24 of TRIPS establish the minimum standards that all WTO members must implement.¹⁷ Article 22.1 provides the foundational definition, linking the product's quality, reputation, or characteristic to its geographical origin.¹⁸ A critical feature of the TRIPS framework is the creation of a two-tier system of protection. While Article 22 provides a basic level of protection for all GIs, Article 23 establishes a higher, enhanced protection specifically for wines and spirits.¹⁹ This distinction has been a persistent source of contention, reflecting power imbalances in international trade by granting stronger protection to products predominantly associated with developed countries.²⁰ The ongoing debate within the TRIPS Council regarding the "extension" of Article 23-level protection to all products underscores the political nature of the international GI regime.²¹

3.2. The Lisbon System and EU Model: A *Sui Generis* Approach

The European Union possesses the world's most developed *sui generis* system for GI protection, which has evolved significantly over time. The Geneva Act of the Lisbon

¹⁴European Commission, 'Geographical Indications and Traditional Specialities Guaranteed Protected in the EU' (2024) <agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cmef/products-and-markets/geographical-indications-and-traditional-specialities-guaranteed-protected-eu_en> accessed 20 September 2025.

¹⁵Susy Frankel and Daniel J Gervais, *The Internet and the Emerging Importance of New Forms of Intellectual Property* (Routledge 2019) 45.

¹⁶William M Bowen, Jitendra Parajuli and Jerald A Jacobs, 'Geographical Indications, Environmental Protection, and Trade' (2014) Cleveland State University Research Paper 1, 12 <repec.umb.edu/RePEc/files/2014_09.pdf> accessed 25 July 2025.

¹⁷TRIPS Agreement (n 1)

¹⁸TRIPS Agreement (n 1) art 22.1.

¹⁹TRIPS Agreement (n 1) art 23.1.

²⁰UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 245.

²¹World Trade Organization, 'Work on Intellectual Property (TRIPS) - Geographical Indications (GIs)' <www.wto.org/english/tratop_e/trips_e/gi_background_e.htm> accessed 31 September 2025.

Agreement on Appellations of Origin and Geographical Indications, administered by the World Intellectual Property Organization (WIPO), provides an international registration system that complements TRIPS.²² Domestically, the EU's framework is governed by detailed regulations, such as Regulation (EU) No 1151/2012 for agricultural products and foodstuffs.²³ This model is characterized by its strong emphasis on the concept of *terroir* the unique combination of natural and human factors in a specific place and its requirement for a detailed product specification dossier.²⁴ A key feature is the central role granted to producer groups ("inter professional bodies") in managing the GI, from application to enforcement. This model is not a neutral technical standard but a culturally and politically specific system that the EU actively promotes globally through its trade policy.²⁵

3.3. The Indian *Sui Generis* Framework: The Geographical Indications of Goods Act, 1999

India established its own *sui generis* system with the Geographical Indications of Goods (Registration and Protection) Act in 1999, which came into force in 2003.²⁶ The Act was influenced by the European model but was also a direct response to biopiracy controversies, such as the attempts to patent turmeric and Basmati rice in the United States.²⁷ The Indian Act defines a GI broadly and establishes a Geographical Indications Registry for registration.²⁸ A distinctive aspect is the requirement for a "registered proprietor" to file the application, which is typically an association of persons, producers, or a state authority.²⁹ However, the Act has been critiqued for its focus on the registration process rather than post-registration governance. It lacks explicit, robust mechanisms to ensure equitable benefit-sharing or to mandate inclusive decision-making structures within the registered proprietor entities, potentially leaving small-

²² World Intellectual Property Organization, *Lisbon System - International Protection for Appellations of Origin and Geographical Indications* <https://www.wipo.int/lisbon/en/> accessed 16 October 2023.

²³ Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

²⁴ European Commission, 'Geographical Indications and Traditional Specialities Guaranteed Protected in the EU' (*Agriculture and Rural Development*, 2024) https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cmef/products-and-markets/geographical-indications-and-traditional-specialities-guaranteed-protected-eu_en accessed 15 July 2024.

²⁵ World Intellectual Property Organization, 'The Protection of Geographical Indications in the European Union' (Panel Presentation, WIPO/GEO/GE/21/PANEL 4.1, 21 May 2024) 3 https://www.wipo.int/edocs/mdocs/sct/en/wipo_geo_ge_21/wipo_geo_ge_21_panel_4_1.pdf accessed 15 July 2024.

²⁶ The Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48 of 1999.

²⁷ Irene Calboli, 'Geographical Indications between Trade, Development, and Culture: The Geneva Act of the Lisbon Agreement' (2017) 14(1) *Northwestern Journal of Technology and Intellectual Property* 1, 5

²⁸ The Geographical Indications of Goods (Registration and Protection) Act 1999, s 2(1)(e).

²⁹ The Geographical Indications of Goods (Registration and Protection) Act 1999, s 11(1).

scale producers vulnerable.³⁰

3.5 The International Foundation for Domestic Contestation

4: The Construction of Authenticity: Boundaries, Authority, and Exclusion

4.1. Introduction: Authenticity as a Legal and Political Act

The GI registration process is fundamentally an act of legally defining authenticity. The cornerstone of this process is the product specification dossier, a document required by both the EU and Indian systems.³¹ This dossier legally codifies the "authentic" product by defining its characteristics, the precise geographical area, the method of production, and the link to the geographical origin. This act of codification is not a simple recording of pre-existing facts but a highly political process of selection, boundary-drawing, and narrative construction that confers legitimacy on certain practices and actors while marginalizing others.³²

4.2. Case Study 1: Darjeeling Tea (India) - The State as the Primary Authenticator

Darjeeling Tea, India's first registered GI, serves as a prime example of state-led authentication. The Tea Board of India, a statutory body, is the registered proprietor.³³ The Board's product specification meticulously defines the geographical boundary (87 tea gardens in the Darjeeling district), the permissible cultivars, and the manufacturing process.³⁴ This legal codification was driven by the need to combat global misuse of the "Darjeeling" name and to create a single, enforceable identity. However, this state-controlled process has been critiqued for centralizing authority and marginalizing the interests of small tea growers and the labour force on the plantations.³⁵ The Board's authority to define what constitutes "authentic" Darjeeling tea overshadows the knowledge and interests of those who actually cultivate and process the leaves, illustrating a tension between global brand management and local participatory governance.

³⁰ T. G. Ajitha, 'Geographical Indications in India: Issues and Challenges – A Case Study of Central Kerala' (2018) 9(2) *Journal of Intellectual Property Rights* 67, 72.

³¹ Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

³² Amy B Trubek, *The Taste of Place: A Cultural Journey into Terroir* (University of California Press 2008) 45.

³³ Stephanie Green, 'Darjeeling: A Study in the Ethics of Fair Trade and Geographical Indications' (2011) *Grist* 1, 2 <grist.org/wp-content/uploads/2011/01/darjeelingtea.pdf> accessed 5 September 2025.

³⁴ Stephanie Green, 'Darjeeling: A Study in the Ethics of Fair Trade and Geographical Indications' (2011) *Grist* 1, 2 <grist.org/wp-content/uploads/2011/01/darjeelingtea.pdf> accessed 5 September 2025.

³⁵ Ritu Srivastava, 'The Paradox of Darjeeling Tea GI: Protection and Marginalisation' (2020) 15(1) *Journal of Intellectual Property Law & Practice* 45, 48

4.3. Case Study 2: Champagne (EU) - The Power of Producer Syndicates

In contrast, the GI for Champagne is managed by a powerful inter-professional body, the *Comité Interprofessionnel du vin de Champagne* (CIVC), which represents both grape growers and champagne houses.³⁶ The product specifications for Champagne are exceptionally detailed, governing everything from grape varieties and vineyard yields to the precise method of secondary fermentation (*méthode champenoise*). The CIVC has been highly effective in constructing and defending the Champagne identity globally. However, this model also reveals internal power dynamics. Historical and contemporary analyses show that the interests of the large champagne houses (*négociants*) have often dominated those of the smaller grape growers within the CIVC.³⁷ Furthermore, the original delimitation of the Champagne region in 1927 was a political process that benefited landowners with influence, effectively excluding neighbouring areas.³⁸

4.4. Analyzing the GI Dossier: Codifying Practices, Delineating Terroir, and Defining "Traditional"

A critical analysis of GI dossiers reveals them as sites of political struggle. The definition of the "method of production" can fossilize practices, potentially stifling innovation and adaptation to environmental or market changes.³⁹ The "proof of origin" often relies on historical documents that may reflect colonial or elite perspectives, thereby silencing alternative historical narratives of subaltern groups.⁴⁰ The term "traditional" is particularly contentious; its definition by external experts in the dossier can strip it of its dynamic, evolving nature as lived by communities, turning it into a static set of rules.⁴¹

4.5. The Marginalized Voices: How Local and Indigenous Knowledge is Sidelined

The mechanisms of exclusion are systemic. The formal, complex, and often costly registration process creates significant barriers for small-scale, informal, or poorly organized

³⁶Comité Interprofessionnel du vin de Champagne, 'Comité Champagne: The Organisation Protecting and Promoting the Wines of Champagne' (*Champagne.fr*) <https://www.champagne.fr/en/find-out-more/champagne-industry/comite-champagne> accessed 15 July 2024.

³⁷European Court of Auditors, 'Special Report: The EU System for Geographical Indications' (2021) 12, 25

³⁸ Kolleen M. Guy, *When Champagne Became French: Wine and the Making of a National Identity* (Johns Hopkins University Press 2003).

³⁹UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 245.

⁴⁰ William M Bowen, Jitendra Parajuli and Jerald A Jacobs, 'Geographical Indications, Environmental Protection, and Trade' (Working Paper, Cleveland State University 2014)

⁴¹ Aaron Glass, 'The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law By Rosemary Coombe (Review)' (2014) 48 *PoLAR: Political and Legal Anthropology Review* 155, 156 <https://www.researchgate.net/publication/259502897> accessed 15 July 2024.

producers.⁴² The requirement for a single, unified applicant group can disadvantage communities with internal social stratification or diverse production practices. The legal and technical language of the dossier acts as a barrier, transferring power to intermediaries like lawyers and government officials, and alienating the very communities whose knowledge is being codified.⁴³

4.7. Authenticity as a Mechanism of Inclusion and Exclusion

This chapter concludes that the legal construction of authenticity within GI systems is a primary mechanism of governance that determines inclusion and exclusion. It is a political process where power is exercised to create a legally defensible but often simplified and exclusive version of "tradition."

5: Equity in Practice: Participation and Benefit-Sharing in Indian and EU GI Cases

5.1. Introduction: The Promise vs. Reality of Equitable Development

This chapter assesses the tangible outcomes of GI systems against their promise of equitable development. It moves beyond the legal recognition of a right to examine the practical realities of participation in governance and the distribution of economic benefits. The central question is whether GIs alleviate or exacerbate existing social and economic inequalities within producer communities.⁴⁴

5.2. Indian Case Study: Pochampally Ikat - Artisan Cooperatives vs. Powerloom Appropriation

The GI for Pochampally Ikat, a traditional textile from Telangana, was secured by weavers' cooperatives to protect against imitation by power looms.⁴⁵ While the GI promised to secure market share and premium prices for handloom weavers, its impact has been limited. Enforcement against powerful power loom units using the "Pochampally" name has been

⁴²T. G. Ajitha, 'Geographical Indications in India: Issues and Challenges – A Case Study of Central Kerala' (2018) 9(2) *Journal of Intellectual Property Rights* 67, 72

⁴³ Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar Publishing 2014) 105.

⁴⁴World Intellectual Property Organization, *World Intellectual Property Indicators 2021* (WIPO Economics and Data Analytics Division 2021) 45 https://www.wipo.int/edocs/pubdocs/en/wipo_pub_952_2021.pdf accessed 15 July 2024.

⁴⁵ *Geographical Indications Journal* No. 87, 28 August 2020, Application No. 57, 'PochampallyIkat'.

ineffective due to high legal costs and weak monitoring.⁴⁶ Furthermore, benefits have been unevenly distributed, often accruing to master weavers and traders within the cooperative structure who control market access, while wage-weavers and women involved in ancillary processes see minimal gains.⁴⁷ This case highlights the challenge of translating legal protection into equitable outcomes, especially when confronting larger economic forces.

5.3. Indian Case Study: Basmati Rice – National Pride, Transnational Disputes, and Farmer Rights

The Basmati GI, covering specific districts in northern India, was largely a defensive measure to protect a valuable export commodity.⁴⁸ The registered proprietors are state-level agricultural boards. While the GI may safeguard national economic interests against international misappropriation, it raises profound equity concerns for the millions of smallholder farmers who grow Basmati rice. The current GI framework offers these farmers little direct benefit or voice in its governance. The primary economic advantages are likely to be captured by large exporters who can leverage the GI brand in international markets. This case demonstrates how a GI can be instrumentalized for macro-economic goals while failing to institute mechanisms that ensure benefits reach the primary cultivators and knowledge holders.⁴⁹

5.4. EU Case Study: Prosciutto di Parma - Regulated Success and the Position of Small-Scale Farmers

Prosciutto di Parma (Parma Ham) is a paradigm of a successful EU GI. The *Consorzio del Prosciutto di Parma* enforces strict production specifications, ensuring quality and commanding a significant price premium.⁵⁰ However, this success creates its own dynamics of exclusion. The costs of compliance with production standards and investment in approved facilities can be prohibitive⁵¹ for small-scale, artisanal producers.⁵¹ This can lead to market

⁴⁶Sudhir K. Rout, 'Geographical Indications and Livelihood Security: A Case Study of PochampallyIkat Weavers' (2019) 54(22) Economic and Political Weekly 45

⁴⁷ William M Bowen, JitendraParajuli and Jerald A Jacobs, 'Geographical Indications, Environmental Protection, and Trade' (Working Paper, Cleveland State University 2014)

⁴⁸ Geographical Indications Journal No. 128, 29 March 2023, Application No. 852, 'Basmati'.

⁴⁹KalRaustiala and Stephen R Munzer, 'The Global Struggle Over Geographic Indications' (2007) UCLA School of Law Research Paper No 07-13, 15 <papers.ssrn.com/sol3/papers.cfm?abstract_id=1143209> accessed 15 July 2024.

⁵⁰ Parma Ham Consortium Announces New Production Rules' (*Progressive Grocer*, 12 June 2024) <https://www.provisioneronline.com/articles/115617-parma-ham-consortium-announces-new-production-rules> accessed 15 July 2024.

⁵¹European Parliamentary Research Service, 'Geographical Indications for Agricultural Products and Foodstuffs' (EPRS Briefing, 2022)

consolidation, where smaller producers are absorbed by larger entities. The case illustrates that even effective GI systems can marginalize smaller actors through the economic barriers created by the standards themselves.

5.5. EU Case Study: Feta Cheese – Defining a National Product and its Internal Exclusions

The grant of a GI for Feta cheese to Greece secured exclusive use of the name for Greek producers after a protracted legal battle.⁵² However, the GI's specification, which allows production across Greece using pasteurized milk from specific breeds, has created internal disparities. Larger dairy companies in central Greece with access to large flocks and modern facilities have benefited most.⁵³ Small-scale pastoralists in mountainous regions, who may use traditional methods with raw milk, can be marginalized if their practices do not conform to the homogenized standard.⁵⁴ This shows that the act of defining a GI, even at a national level, involves political and technical choices that can create internal winners and losers.

5.6. Assessing Legal Frameworks: Capacity for Protecting Marginalized Producers

A critical reading of the legal frameworks from Chapter 3 reveals their limitations in ensuring equity. The Indian GI Act, while mentioning "producers," lacks mandatory provisions for their direct participation in governance or for benefit-sharing audits.⁵⁵ The EU system, though structured around producer groups, does not mandate internal democratic governance, allowing for the dominance of powerful members.⁵⁶ Both systems contain structural features that can perpetuate, rather than mitigate, inequity.

5.8. Systemic Barriers to Equitable Benefit-Sharing

The chapter concludes that the inequitable outcomes observed are not anomalous but are often systemic, stemming from the design of GI laws and the power dynamics they engender. The promise of equitable development remains largely unfulfilled for the most vulnerable stakeholders, indicating that the current models are insufficient and require fundamental rethinking.

⁵²Commission Implementing Regulation (EU) No 1107/2012

⁵³Irene Calboli, 'The Feta Cheese War: A Story of Protection and Power' (2020) 53(3) *Vanderbilt Journal of Transnational Law*

⁵⁴European Court of Justice, Case C-465/02 *Germany v Commission* [2005] ECR I-09115

⁵⁵The Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48 of 1999.

⁵⁶Regulation (EU) No 1151/2012 (n 27) art 13.

6: Towards a Reformed GI Model: Normative Principles and Practical Pathways

6.1. Synthesizing the Findings: Key Flaws in the Current GI Governance Model

The critical analysis in the preceding chapters reveals several interconnected flaws in the prevailing GI model: a top-down process of constructing authenticity, the marginalization of community voices in governance, the dominance of state and corporate actors, and the absence of effective mechanisms to ensure equitable benefit-sharing.

6.2. Principle 1: Prioritizing Community-Led Governance and Decision-Making

A reformed model must shift from a representative to a participatory and inclusive governance structure. This requires moving beyond the mere existence of a producer association as the applicant. Legal frameworks should mandate that the governance body of the GI right-holder includes reserved representation for different stakeholder categories, such as small-scale producers, women, indigenous groups, and landless workers.⁵⁷ This ensures their direct voice in crucial decisions regarding production standards, marketing strategies, and the distribution of benefits. This principle draws inspiration from community-based natural resource management models that emphasize participatory decision-making.⁵⁸

6.3. Principle 2: Ensuring Legal Legitimacy and Procedural Justice for Traditional Knowledge Holders

The registration process itself must be reformed to ensure procedural justice. This involves incorporating the principle of Free, Prior and Informed Consent (FPIC) as a legal requirement before a GI application is submitted.⁵⁹ FPIC entails transparent consultations, culturally appropriate communication, and the right for communities to withhold consent. Furthermore, the legal burden should be reversed: applicants should be required to demonstrate how the product specification reflects community-held knowledge and practices, rather than communities having to challenge a pre-defined dossier.⁶⁰

⁵⁷ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

⁵⁸ Arun Agrawal, 'Common Property Institutions and Sustainable Governance of Resources' (2001) 29(10) World Development 1649, 1655.

⁵⁹ UNGA Res 61/295 (13 September 2007) UN Doc A/RES/61/295.

⁶⁰ S. James Anaya, *Indigenous Peoples in International Law* (2nd edn, Oxford University Press 2004).

6.4. Principle 3: Embedding Equitable Benefit-Sharing Mechanisms into GI Regulations

To move beyond hopeful market assumptions, equitable benefit-sharing must be legally embedded. GI regulations should require the submission and public disclosure of a detailed Benefit-Sharing Plan as part of the application.⁶¹ This plan should outline concrete mechanisms for redistributing financial gains, such as allocating a percentage of the royalties or membership fees to a community development fund for initiatives like education, healthcare, or environmental sustainability within the GI region. It should also include measures to ensure fair and transparent pricing for primary producers.

6.5. Proposal for Legal Reform: Amending the Indian GI Act and Influencing International Agreements

These principles can be translated into specific legal amendments. For India, this would involve revising the GI Act and Rules to incorporate FPIC requirements, mandate inclusive governance structures for applicant groups, and introduce the obligation to create and implement a Benefit-Sharing Plan.⁶² At the international level, forums like WIPO should be leveraged to develop soft law instruments (guidelines, model laws) that incorporate these equity-focused principles, thereby challenging the one-size-fits-all approach often driven by narrow trade interests.⁶³

6.6. Proposal for Institutional Reform: The Role of Independent Oversight Bodies and Community Registries

Beyond legislative text, institutional reforms are critical. The establishment of an independent, multi-stakeholder oversight committee at the national level (e.g., within or alongside the GI Registry) is proposed. This body would be empowered to review compliance with equity principles, monitor benefit-sharing, and adjudicate internal disputes within GI communities. Additionally, supporting the development of community-managed digital registries of traditional knowledge can empower communities to document their practices on their own

⁶¹Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014) 3008 UNTS 3.

⁶²United Nations Conference on Trade and Development (UNCTAD), 'Local Products, Global Markets: The Role of Geographical Indications in Sustainable Development' (UNCTAD/DITC/2022/1, 2022) 22.

⁶³World Intellectual Property Organization, *The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (WIPO Publication No 2023/5/2, 2023) 12 <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-2-en-the-wipo-intergovernmental-committee-on-intellectual-property-and-genetic-resources-traditional-knowledge-and-folklore.pdf> accessed 15 July 2024.

terms, strengthening their position prior to any formal GI application.⁶⁴

6.7. A Blueprint for a Community-Centered and Equitable GI System

This chapter concludes by presenting these integrated reforms as a blueprint for a more just and sustainable GI system. This reformed model would reposition GIs not merely as tools for market differentiation but as instruments for community empowerment, cultural self-determination, and equitable development. While this approach may introduce complexity and challenge commercial expediency, it is a necessary evolution to ensure that GIs genuinely serve the communities whose heritage they commodify.

7: Conclusion

7.1. Summary of Argument and Confirmation of Hypothesis

This thesis has argued that Geographical Indications are deeply political constructs, not neutral technical instruments. Through a critical socio-legal analysis of international frameworks and comparative case studies from India and the EU, it has demonstrated that GI governance is a field where powerful actors strategically construct definitions of authenticity. This process systematically marginalizes legitimate community participants and facilitates the inequitable appropriation of economic and cultural value, thereby confirming the central hypothesis.

7.2. Policy Implications and Recommendations

The findings carry significant policy implications. They suggest that merely strengthening enforcement or streamlining registration processes is insufficient. Meaningful reform requires a fundamental reorientation of GI systems towards principles of community-led governance, procedural justice (FPIC), and legally embedded benefit-sharing mechanisms, as outlined in Chapter 6. Policymakers in India and international bodies must prioritize equity to prevent GIs from becoming instruments of dispossession.

7.4. Limitations of the Study

This study is limited by its reliance on documentary analysis and secondary literature. The absence of primary fieldwork means it captures the structural and legal dimensions of power more fully than the nuanced, lived experiences of marginalization within specific GI

⁶⁴KabirBavikatte and Daniel F. Robinson, 'Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol' (2011) 7(1) Law, Environment and Development Journal 35.

communities. The focus on prominent, often contentious, case studies may also not reflect the full spectrum of GI outcomes.

7.5. Avenues for Future Research

Future research should address these limitations through detailed ethnographic studies of producer communities within specific GI systems. Further comparative work is needed on GIs in African and Latin American contexts. Finally, research could explore alternative, non-properitarian models for protecting heritage-based products that operate outside the formal GI framework, potentially offering more community-centric pathways.

