

CHALLENGES POSING TO GEOGRAPHICAL INDICATION IN INDIA

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Abstract

In the present time, like other forms of Intellectual property, geographical indication (GI) too has universally recognised as the potential form of Intellectual property. India is known for its mega diversity not only in community but also in the culture and heritage based upon the territorial ground, and therefore there is a tremendous importance assigned to geographical Indication. If we utilised this form of IP prudently and wisely, it will be benefited not only to the community but also the entire country. However, there are a number of difficulties on legal, economic, social and geographical ground as a result of which some Indian states are falling behind while others are actually performing well in getting the benefit of GIs. The researcher aims at analysing the challenges posing to the present GI Protection system provided under Geographical Indication Act, 1999. The researcher will explain the study by pie diagram and charts based upon the secondary sources like official website of WIPO, WTO, IP India, case studies from literatures, journals, books etc. The researcher's outcome and finding will have great significance to the Government in solving these challenges and establish strategies for effectively realising potential benefits inherent in Geographical Indications.

Keywords: *Geographical Indications, WTO, TRIPS agreement, Challenges, Intellectual Property*

Introduction

In the present time, like other forms of Intellectual property, geographical indication (GI) too has universally recognised as the potential form of Intellectual property. This term has been used and defined for the first time under TRIPS Agreement in the following manner-

“Indication with helps in identifying the goods or product linking with the specific territory, place, region or locality which specifically attributes about the quality, characteristic or reputation of goods”¹

From the above definition it is clear that GI used in linking the product and its origin. As per WIPO Magazine 2017, IPRs will undergo a fresh revolution as GI emerged as the "sleeping beauty IPR."²

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¹ TRIPS Agreement (Article 22), s.3.

² Marcus Höpferger, “Geographical Indications: From Darjeeling to Doha” WIPO Magazine 2017 available at https://www.wipo.int/wipo_magazine/en/2007/04/article_0003.html (last visited on January 10, 2023)

In India controversies on Basmati Rice and Darjeeling Tea are the landmark incidences for appropriate redressal and in order to comply with TRIPS obligation enacted Geographical Indication of Goods Act 1999 for providing protection and recognition to the goods qualifying GI Criteria³. This Act came with the following features-

1. It attempted to define various terms like geographical indications, goods, indication, name, producer etc.
2. Provides procedure, duration, effect of the Registration, rectification and correction of Register.
3. Provides special provision for Trademarks.
4. Provides the provision for offences, Penalties and Remedies.

The Indian legislation on Geographical Indication aims at -

1. Protecting the interest of the manufacturer and motivating them in developing more products.
2. Protecting the interest of the consumers from misleading and unauthorized GI's.
3. To encourage the GI in the international market in order to promote economic success to the nation.

Till present date, there are 420 GIs belongs to the different State of India and other Nations which have received the legal recognition as 'registered GI's'⁴ for the different goods mentioned under GI Act 1999.⁵ Out of 420 GI's around 24 GIs belongs to other countries and other GIs belongs to India. India is known for its mega diversity attribute not only in community but also in the culture and heritage based upon the territorial ground, and therefore there is a tremendous scope for geographical Indication. The list of registered GIs provided by the Registry offices shows that only few states of India have bagged the tag of registered GIs whereas other states are the recipient of only one or two GIs. This condition begs the justification for such substantial variation for which this research tries to find out difficulties and problems posing threat to existing non registered GIs of India.

Review of Literature

³ Shreya Nupur and Kumari Youkta "Issues and Challenges of Geographical Indication in India" Vol.6 *IJMR* p.103 (2020) available at: <https://eprajournals.com/IJMR/article/3545> (last visited on January 10, 2023)

⁴ *GI Official Website* available at https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/GI_Application_Register_List_14-07-2022.pdf (last visited on January 10, 2023)

⁵ Geographical Indication Act, 1999, s 2(f), No.38, Act of Parliament,1999(India), available at: <https://www.indiacode.nic.in/bitstream/123456789/1981/1/a1999-48.pdf>

Many authors through their extensive research tries to explain the importance of GI, its function, benefit and many other aspects of GI at international and domestic level. Amongst the numerous studies on GI following studies of the authors provided the scope of current research-

In the research article on ‘*International Property Right Index*’, **Dr. Sudhir and Aryan Mathew**⁶ it was noted that due to the sui generis system provided under the TRIPS agreement for the protection of GI, it was discovered that there was no uniformity of laws throughout the universe despite the TRIPS agreement setting the minimal standard of protection by providing a common definition for all GI. A special study pertaining to GI laws in India by **Kasturi**⁷ on “*Socio-Economic Implication of Protection of GI in India*” has firmly agreed with the issue that the sui generis system is the cause for the countries. She made the same observation in her analysis and concurred that the introduction of the TRIPS Agreement represented a significant advancement in the securing the protection of geographical indications by establishing a minimum standard for protection. Despite this, the TRIPS structure of protection remains based on an arbitrary classification of goods. **Latha. R. Nair**⁸ has provided evidence to corroborate this in her research study titled “*Geographic Indication- A quest for Identity*,” showing that there is no universal interpretation of the legislation regarding geographic indications among WTO members. Hence the study is necessary for focusing on these gaps. **Rangekar**⁹ in his research work on the proposal for extending Art. 23 to all the other products than only wines and spirit, went ahead the contentious problem of extending protection to other products. He examined various issues like the extension's scope and cost and concluded that the debate over GI extension at the TRIPS council begins with some shared concern over the value of distinctive marks in the market place. The cost and benefits of expanding food protection were examined by the **International Food and Agriculture Trade Policy Council**, as well as the potential effects on farmers, trade, consumers, and the national government. Finally, it has been

⁶Sudhir and Aryan Mathew, “International Property Right Index” p.13 (2009) available at: <http://www.altacit.com/pdf/The%20Protection%20of%20Geographical%20Indication%20in%20India%20Case%20Study%20on%20Darjeeling%20Tea.pdf>, (last visited on Jan 12, 2023)

⁷ Kasturi “Socio-Economic Implication of Protection of GI in India” Center for *WTO Studies* p.1. (2009) available at www.wtocenter.iift.ac.in, (last visited on Jan 13, 2023).

⁸ Nair.L.R, “Geographical Indication- A search for Identity”, *Lexis nexis*, pp.167-169 1st ed.(2004) last visited on Jan 13, 2023)

⁹ Rangekar “GI-A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits”, *UNCTAD- ICTSD Project on IPRs and Sustainable Development* Issue Paper no 4 available at: <http://www.iprsonline.org/resources/docs/Rangekar%20-%20GI%20-%20Blue%204.pdf> p. 17 last visited on Jan 13, 2023.

determined that there aren't many thorough economic analyses of how GIs actually work in practise.

Gopalkrishnan Prabha Nair¹⁰ an author reveals that current laws are insufficient and the key economic benefits of GI's are not reaching genuine producers. However, effective GI protection at the domestic and global levels will contribute to and significantly enhance the socioeconomic situation of the population.

Innumerable studies on the subject of GIs have been conducted. studies on the subject of GIs have been conducted, yet there has been relatively little written about the difficulties that GI producers and consumers face. Through this study researcher tries to address a significant vacuum in the literature by outlining the problems and difficulties associated with GI products.

Objectives for Study

The principal objectives of the research are-

1. To find out the reasons for the disparity amongst the various states of India in getting registration India.
2. To identify the major issues and challenges in protection of GIs in contemporary scenarios.

Methodology

The Research Methodology of the proposed study shall be Doctrinal.

Data sources: Secondary sources like official website of WIPO, WTO, IP India, Manupatra.com, case studies from literatures, journals, books, news items etc

Tools: All the information have been shown by using Pie charts and bar graphs.

Findings

This study shows that though GI Act was designed to enhance the commercial possibilities of manufactured or cultivated outputs by organisations based in a certain geographic area, and the development of the nation but it has not been as effective as anticipated. This is because there are a number of legal, social, economic, technical and geographic barriers that provide a significant difficulty to accomplish the objectives of GI Law. Each of these challenges are mentioned as under-

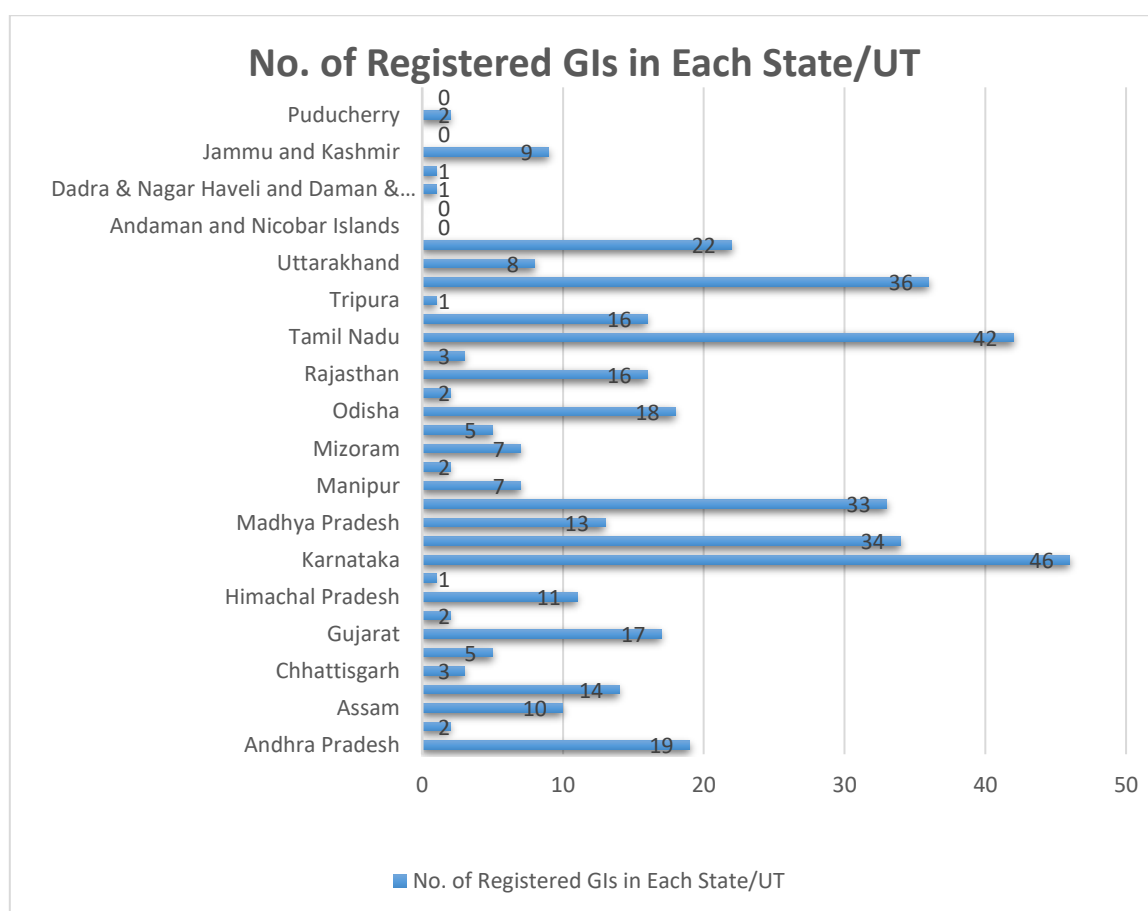
¹⁰ N.S. Gopalakrishnan, Prabha S. Nair & Aravind K. Babu "Exploring the Relationship between Geographical Indications and Traditional Knowledge" p.47 (Aug 2007) available at https://www.iprsonline.org/ictsd/docs/Gopaletal%20-%20GIs_TK.pdf (last visited on Jan 13, 2023)

1. Legal Challenges

The Geographical Indications Act, 1999 has enacted in India with an object to fulfil the aforesaid three objectives mentioned in the introduction. However, this act actually has a number of deficiencies that need to be fixed, as will be explained below.

a. Disparity among different states in registering GIs

As per the current list of registered GIs, it has seen that every state and union territories has owned registered GIs for their respective product/ products. However, there is greater disparity among different states in registering GIs. Some states are the proud recipient of multiple registered GIs where as other states are far lagging behind with just one or two registered GIs. The below graph explained this-



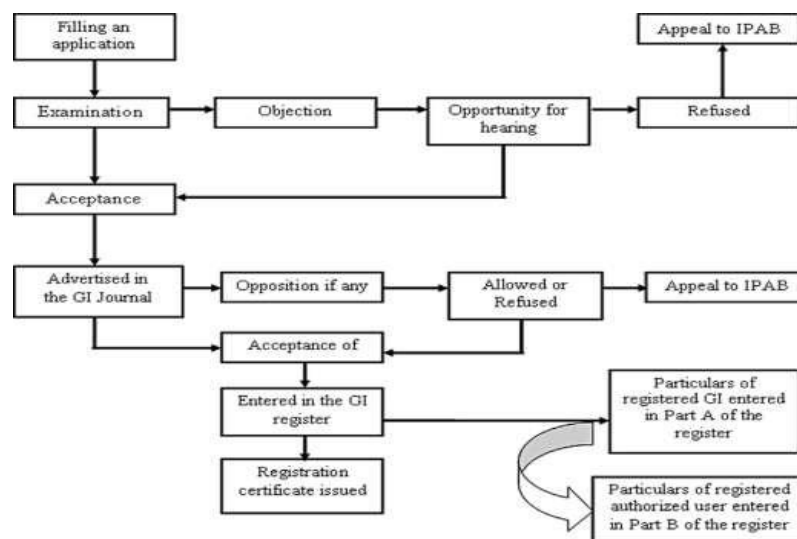
Source: Authors, based on data from the IP official Website India¹¹

The graph shows the number of registered Geographical Indications from the different states and union territories of India. It has found that Karnataka, Tamilnadu, Uttarpradesh, Maharashtra, Kerela and West Bengal are some states which incredibly bagged many registered

¹¹ India Official IP website available at https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/GI_Application_Register_List_14-07-2022.pdf (last visited on Jan 14, 2023)

GI tags. The other states like Arunachal Pradesh, Bihar, Gujarat, Rajasthan and few others are in the verge of getting good number of GIs registered. However, on the other hand Arunachal, Delhi, Jharkhand and Tripura have only one or two GIs. The remaining states and UT's regrettably do not have any GIs registered yet. The whole status of all the states is shown above with the help of Bar Graph.

Further, the extensive registration process is also one of the major legal hurdles for the GIs in India. From the below flow chart one can infer the intricacies involved in the multiple stages from the first filing date till the issuance of registration certificate.



Source: Geographical Indication Registry office¹²

In addition to the above barrier, it has found that more than 250 GI applications are still pending with GI Registry office¹³.

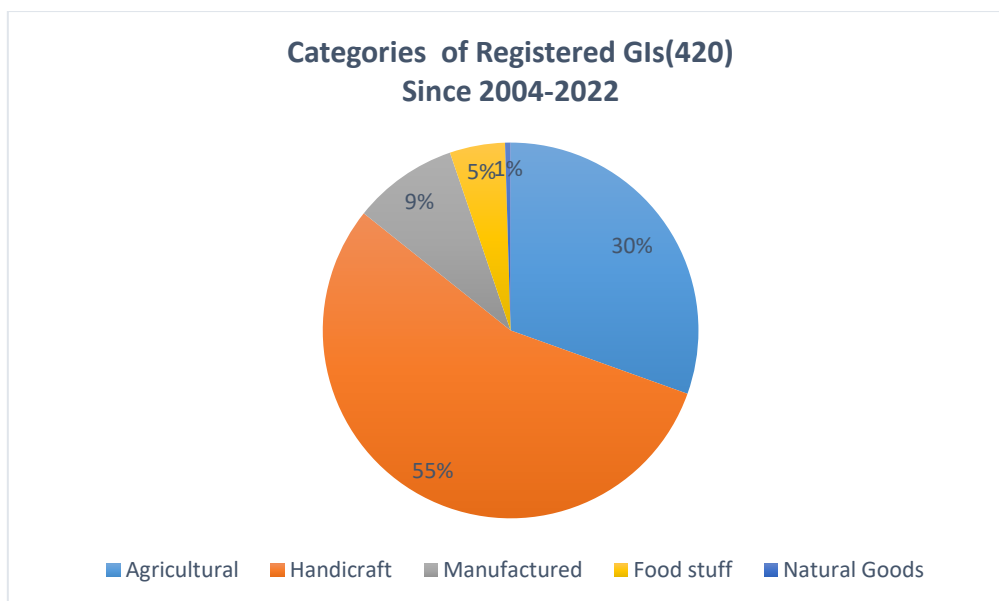
b. Disparity in the percentage of GI Categories

It has also found that majority of GIs are registered for handicraft and Agricultural goods. Whereas, the rest GIs are registered in other domains namely, foodstuff, manufactured and natural goods. The other categories should equally uprise by educating and motivating the producers and artisans by providing the raw material at the subsidies rate by the government.

Following Pie diagram shows this-

¹² India Official IP website, available at <https://www.ipindia.gov.in/the-registration-process-gi.htm> (last visited on Jan 14, 2023)

¹³ Supra note 3 p.106



Source: Geographical Indication Registry office¹⁴

c. Problem of genericide

Another major legal barrier is the provision laid down under Section 9 of the Act in compliance with TRIPS provision that solely leaves it up to the country to determine whether or not a specific geographical name has transformed into a generic term.

GI Act prohibits the registration of GI which are¹⁵ -

- a) identified as generic names or indications of the products or
- b) which are not protected or have ceased to be protected in their country of origin or
- c) which are no longer in use in that country

As soon as the GI becomes generic, it reverts to the public realm, it is restricted in getting protection in the country in which it originates or has been abandoned, or when it has gone out of usage there¹⁶.

2. Economical and Technical Challenges

In order to achieve the sustainability of GI, the developing country like India need to have the financial and technical assistance to promote their product in international market. The primary problem in India is that the merchants take home the dragon's portion of the economic or financial gains brought about by the GI as compare to producer who has the actual interest¹⁷.

¹⁴ India Official IP website, available at <https://www.ipindia.gov.in/the-registration-process-gi.htm> (last visited on: Jan 14, 2023)

¹⁵ Geographical Indication Act, 1999, S 9, No.38, Act of Parliament,1999(India).

¹⁶ Geographical Indication Act, 1999, S 9 Explanation I & II, No.38, Act of Parliament,1999(India).

¹⁷Aishwarya Chaturvedi "Is Geographical Indications Sufficient to Aid to the Indian Economy" *Managing IP Blog* p.1 (May 2019) available at <https://www.managingip.com/article/2a5brqcfb83rfpjt5b0g0/is-geographical-indications-sufficient-to-aid-to-the-indian-economy> (last visited on Jan 14, 2023)

It has clear from the few instances like Lucknow Chikankari and Firozabad's glassware that Simply registering GI will not contribute to the preservation and promotion of the craft or offer the craftsmen any discernible benefits.

Mr. DS Rawat, secretary general of ASSOCHAM said that,

*“Chikankari industry is highly fragmented and has been facing significant challenges owing to insufficient market information on export trends, opportunities and prices, scarcity of raw materials, lack of adequate finance and growing competition from mill and factory-made products.”*¹⁸

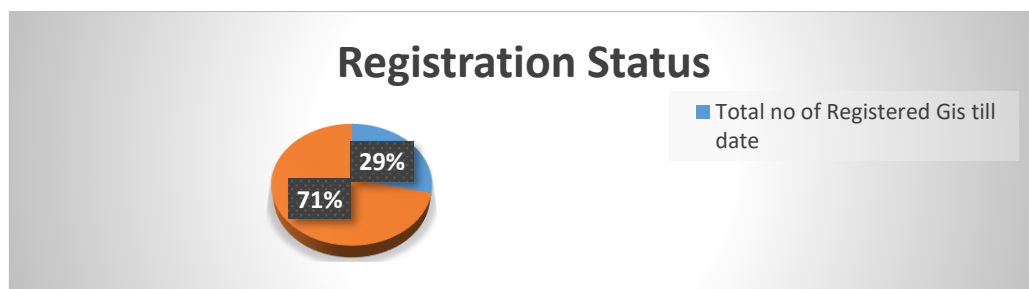
A common artisan or rural producer could not be able to afford the planned strategy that involves a great deal of time, patience, and financial strain required to bring GI products to the global market and obtain the international GI brand.

It also involves the monitoring cost for developing self GI mechanism or in hiring the legal services provided by the IP firms in order to monitor the instances of infringement. Many states have spent huge amount of expenses for the legal action in Protecting their GIs form infringement. For example- Legal battel initiated by Tea board for Darjeeling Tea and Pochampally Handloom Weavers Co-op Society Ltd for Pochampally Ikat have afforded huge financial burden for fighting legal battel against infringement instances.

3. Social Challenges

The primary social challenge is the lack of awareness about GI Laws in India. Despite the fact that the legislature of India has enacted the GI Act in the year 1999 but, still many rural producer and common artisan have no knowledge that their skilled goods or produce is worth for getting protection. They have no knowledge regarding filing and getting GI protection. They even have less knowledge in case someone else is misusing and misleading their GI. They do not understand what remedy is available to them for curbing such misuse. It has further analysed that there is a huge disparity in registration status.

¹⁸ Amit Verma “Chikan from China threat to Lucknow craft” *The Asian Age*, Jan 21, 2016 available at <http://www.uniindia.com/machine-made-chinese-chikan-threatening-livelihood-of-5-lakh-embroidery-workers-in-lucknow-assochem/business-economy/news/342037.html>(last visited on Jan 14, 2023)



Source: Geographical Indication Registry office¹⁹

For the above pie chart, it is clear that that currently GI registry has received total 1044 GI applications for registration but it is seen that only 420 GIs are registered. The remaining are either withdrawn, pending, refused or abandoned.

4. Geographical Challenges

A lot of tussles are arising regarding the exact location for deciding the exact location or origin of the product. It specifically found in agricultural products and foodstuffs because one product can be manufactured or grown in multiple territories and this is because it creates problem. For instance, many states have GI claim on Basmati rice.

Regrettably, unlike other forms of IP offices for Trademark and Patent situated at different places, Copyright and GI office is situated at only one place. Copyright office situated at Delhi and GI registry office is located only in Chennai.

It is worth appreciating fact that Government of India has introduced online portal for IP services as well. Like other forms of IP, we can file the application for GI online. But despite this fact when it comes to individual hearing either at examination stage or opposition it makes it difficult for producers from other states that are far from Chennai to visit the registry office.

Conclusion and Suggestions

India by enacting the GI law for providing the protection to the products linked with the geographical area is one of the significant steps in protecting community interest and enhancing the economic growth of the country. Undoubtedly, almost all the states have their respective GI registered after complying all the due process of registration. However, there is a great disparity in the number of registered GIs among the different states. It has found that Karnataka, Tamil Nadu, Uttar Pradesh, Maharashtra, Kerala, West Bengal are some states which incredibly bagged many Registered GIs mostly in the class of handicraft and Agriculture.

¹⁹ India Official IP website, available at <https://www.ipindia.gov.in/the-registration-process-gi.htm> (last visited on Jan 16, 2023)

Whereas other states are still struggling to enhance their participation in registering their GIs. The high rate in marketing GI goods in global market and the expenses for monitoring the instances of infringement is the major challenge in fulfilling the desired objective of GI Act. Despite the fact that the government has launched a fantastic initiative by introducing the concept of digital India which gives local artisans a global platform to advertise their goods without involving third party, it is not enough. Since most of the producers and artisan are uneducated, they could not able to avail its benefit.

In the light of above findings and conclusion, the researcher has proposed the following suggestion in the existing legal system-

1. To overcome the marketing and monitoring cost, the poor producers and artisans should receive export subsidies from the government so they may continue to compete on the international market. This will not only protect their GIs but also enables them to bear the economic expenses. Non-Profit Organizations would be grateful for financial assistance with the GI's post-registration branding.
2. To resolve the intricacies, involve in the registration process, the introduction of expedite examination procedure same on the verge of Patent should employ.
3. The State Government has made multiple attempts to seize this chance by merging the marketing of GI products with the department of tourism. These programmes need to be expanded because they are currently only available in places with civil societies that are informed and aware²⁰.
4. To solve the technical difficulties in monitoring the instances of infringement, introduction of strong GI mechanism is the need of an hour at domestic and international level. It is necessary to alter the present Geographical Indications Act to incorporate stronger punitive measures for violators²¹.
5. To countered the challenge on geographical ground, the government should establish the branches at few places for remote accessibility.
6. In order to overcome from the social challenge, it is a need of hour to take the expedite measure for spreading GI awareness through organising workshop and training program for upgrading the skills of weaver and manufacturers from rural area.

²⁰ Supra note 17 Last para p.1

²¹ Roy Sanjib “Jural analysis of GI in Odissa” *Shodhganga* P. 229 (2020) available at <http://hdl.handle.net/10603/284236> (last visited on Jan 17, 2023)