






Issues and Challenges of the Indian Handloom Sector: A Legal Perspective

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Issues and Challenges of the Indian Handloom Sector: A Legal Perspective

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Abstract

One of the most significant unorganized industries in the Indian economy is the handloom industry. According to some estimates, the handloom industry employs about forty lakh people. However, weavers involved in handloom production are unable to thrive in the face of fierce global competition and predatory tactics by multinational textile corporations, which threaten the survival of traditional handloom weavers through technical innovation. Due to these factors, the Indian handloom is always on the verge of hunger and starvation. The handloom industry's strength comes from the fact that it is built on human talent, which is a component of traditional knowledge. Traditional knowledge cannot be adequately protected by the IP system in place. However, GI has developed as a legal tool for the defence and advancement of traditional knowledge. This is especially true in the case of the Indian GI Act, which covers a wide range of handloom products that are solely the result of human talent and independent of natural variables like typical area climatic circumstances. To preserve our rich historical and cultural legacy, it is imperative to safeguard and protect traditional methods, knowledge, and handloom products. Handloom weavers can benefit from Intellectual Property Rights protection under the existing worldwide regime. Some of the problems the handloom industry is currently facing and which give rise to legal issues include the socioeconomic circumstances of the weavers, the profitability of the handloom industry, the difficulties the weavers face, the accessibility of financial support, and innovative marketing strategies. Therefore, it is imperative that we consider these challenges and develop the kinds of plans that could aid the handloom business and weavers in improving their current situation. As a result, the paper looks at the current legal system for intellectual property rights to effectively safeguard the personal rights of handloom weavers as well as the craft itself.

Keywords: National and International Handlooms, Geographical Indication, Intellectual Property.

Introduction:

In recent years, there has been a growing awareness in India about the importance of protecting traditional crafts from piracy and unauthorised duplication, prompting the Indian government to

recognise the significance of Intellectual Property Rights in the Crafts Sector and simultaneously launch mass campaigns to preserve India's traditional handicrafts that fall under the Geographical Indications Act.ⁱ

The textile industry in India has a longstanding history in the Indian economy, going back many centuries. Indian handloom industry, together with the skills of weavers, illustrates the depth and diversity of Indian culture. Handloom goods from India are well-known for their unique designs and beauty.ⁱⁱ The open market for Indian handicrafts has always existed, but the international market for these craft items is halted due to a lack of standardised quality; a lack of product creativity; design pieces and utilitarian value to keep up with changing fashion trends; diverse customer tastes and acceptable universal norms. To maintain its worldwide market share, Indian handicrafts must adapt and change in response to changing global demand. Crafts protection through intellectual property regulations like as GIs and Certification Marks has increased Indian crafts people's confidence that their ideas and traditions would be protected from theft, allowing them to earn more in the global market. This has compelled Indian craftspeople to broaden their product offerings and embrace new and distinctive styles.ⁱⁱⁱ

The Cultural Significance of Indian Handcrafts and needs for preservation:

The handloom sector of India is vital to the country's economy. It is India's leading and greatest cottage industry, having a strong historical tradition of thousands of years of excellent workmanship that exemplifies the vibrant Indian culture. The handloom sector's importance in the national economy cannot be overstated due to its advantages in the flexibility of short production runs, quality, innovation, and suitability for export needs. Indian artisans have had such exquisite mastery over their fabric from Egyptian Babylonian days that they have been acclaimed across the world for their hand weaving, spinning, and printing processes that have been passed down through the ages.^{iv}

Historically, the handloom business could be discovered in every state of India, with each state producing a particular handloom product, such as the Tie and Die technique from Rajasthan, and Chanderi from Madhya Pradesh, or Jacquard from Uttar Pradesh. Due to its customary wide range, the Handloom Industry of India is in constant demand in the Indian market as well as overseas for its craftsmanship and pattern sophistication. This was a home-based company that supported hundreds of weavers of India. The handloom industry thrived in India for hundreds of years owing to the uniqueness of the handloom products, requiring little capital, and developing adaptable, environmentally friendly new goods.

The world has been awed by India's traditional handlooms for their unmatched and exclusive craftsmanship, various civilizations, and timelessly enduring traditions. India's handlooms are the pinnacle of its cultural diversity and display the artistic talent of weavers all over the world. The world is proud of, adores, and praises all the tiny handwoven creations. Indian inventiveness and expertise are displayed in every thread utilised up until the handmade processes. India's weavers have historically had strong negotiating strength. The weavers' economic advancement and perspective of handlooms evolved from being seen as a cultural endeavour that gave high returns to a barely viable activity as the industrial revolution gradually reduced their negotiating power.

Problems and Challenges faced in this sector:

The Indian economy's backbone is facing a tough fight from semi-handcrafted and machine-made copies from China, Malaysia, and Indonesia, among others. In recent years, there has been a growing awareness in India about the importance of protecting traditional crafts from piracy and unauthorised duplication, prompting the government to recognise the significance of Intellectual Property Rights for the Crafts Sector and to launch a worldwide campaign under the Geographical Indications Act to protect India's traditional handicrafts.

While India's Intellectual Property Rights (IPR) Regime prior to the enactment of GI Act, 1999 was insufficient to answer all the issues involved in handicraft preservation, the Geographical Indications Protection and Handicraft Mark can be strong ways to create value for the handloom sector, delivering commercial gains in the form of increased sales results, increased rates, and investment returns if successfully implemented.^v

In a few years, they are also projected to generate general socioeconomic improvement and an improved lifestyle for the artisanal sector. However, if they sit quietly on some registry, as is now occurring in India, they will fall short of expectations. Intellectual property rights should turn from core law principles and actionable rights into marketing instruments that generate and grow brand value for the product in order to become commercially important assets. A successful IP-based marketing strategy may assist craftsmen in increasing their competition and market value while reducing risks and uncertainties. Intellectual property assets should be exploited innovatively, pro-actively, and imaginatively in order to realise monetary rewards.

Utilizing the possible business advantages of GI registration in India raises a number of questions and concerns. The lack of a strong post-GI mechanism in the nation is arguably the largest worry. Although it is relatively simple to register a GI domestically, and there has been some progress made in this area over the past 20 years, it is crucial to realise that this alone will not accomplish the Act's goals unless it is supported by effective enforcement mechanisms in both the domestic and export markets. In reality, enforcing the Act in other nations is a much more challenging endeavour due to the numerous challenges that may arise, such as the intricate registration procedures in various foreign nations, the astronomical costs associated with hiring a watchdog organisation to gather information on misappropriation, and the enormous financial resources required to fight legal battles abroad.

In order for producer groups to effectively defend and promote their GI brands in India, government support is essential. Perhaps only in the case of one good, namely Darjeeling Tea, has the Tea Board been successful in defending against misappropriation in a few countries because they have the financial means to do so.

Though the Act outlines the circumstances in which a registered GI is considered to have been violated, it is quiet regarding the mechanisms and measures to combat the violation, and it is in this area that the government needs to take a more active role. The effectiveness of the post-GI process will truly determine the advantages of GI protection under the GI Act. A certain level of awareness among the craftsmen is necessary to realise a GI's full potential. The post-GI process needs to have sufficient provisions for advertising and ongoing public awareness raising.

Additionally, and this is still a serious worry, majority producers lack the ability to report and defend against an infringement complaint.

Currently, it appears that most GI-related activity is focused on registering GI goods, and in many cases, state governments are moving quickly. A GI product's commercial status and prospects in the domestic and international markets, the possibility that its GI status will contribute to its future growth, and the socioeconomic ramifications of its GI protection for the communities involved in its supply chain are frequently not taken into account by applicants. Even with GI goods, only a small number of stakeholders are aware of or actively participate in the registration process. This has occasionally resulted in gravely inaccurate omissions and commissions, negating the main goal of the GI Act. A mistake was found in the Madhubani painting. Madhubani paintings on paper are listed as GI under class 16, hence paintings on cloth are likely not protected.

Another flaw in the Act is that it does not differentiate between a legitimate producer, retailer, or dealer when defining the term "producer." The advantages of the Act might not trickle down to the actual producer as a result of this difference. The true producers may still be reliant on these intermediaries for access to markets and a variety of economically potent middlemen may still maintain their hold over markets. Even though GI protection would likely result in financial gains, in this situation, enterprises in the higher stream of the supply chain may end up taking a disproportionate amount of the economic value that results from obtaining protection.

Policies and Legislation regarding Indian Crafts:

The change of approach of the government propelled by globalization and liberalization, was from protectionism to liberalization, as the thrust had been given on open market-led industrial productivity and efficiency vis a vis protected indigenous manufacturing and production system. As part of this transition, the government implemented the New Textile Policy in 1985^{vi}, which ushered the rise in the export of textiles and import of equipment in the first instance and the expansion and restructuring of mills and power looms, thereafter. This regulatory adjustment gave an additional boost to power looms, which have seen tremendous development since the 1960s. In contrast to policies pursued after independence, which recognized the importance of the handloom sector in the economy both in terms of providing employment and producing cheap cloth for the rural and urban poor, the 1985 policy statement proclaimed cloth production as the sole objective, ignoring the close and positive relationship between production and employment in the handloom sector. This was somehow a departure from the proclaimed goals of social justice and welfare. To overcome capacity constraints on mill production, that era had witnessed unbridled growth of unlicensed Benami power looms and taking advantage of the unorganized nature of labour, the power loom proprietors were able to keep wages low and so, offer their products at a lower price in the market^{vii}.

To safeguard the interests and welfare of weavers, the government has passed plethora of laws, including the Handloom (Reservation of Articles for Production) Act of 1985, the Geographical Indication (GI) Act of 1999, and the Handloom Mark Scheme of 2006-07.

According to the Handloom (Reservation of Articles for Production) Act of 1985, the purpose of the act is to preserve the livelihoods of millions of handloom weavers and the rich cultural legacy

of the Indian handloom industry from the incursion of the power loom and mill sector. This statute reserves eleven items to prohibit power looms and the mill sector from manufacturing the same.

In Geographical Indications Act (GI) of 1999 - GI is a key component of the Intellectual Property Rights (IPR) framework, which benefits weavers by granting them total control over their creative brains. A GI tag is an identifier that authenticates a product's affiliation to a certain geographical area of India. The product must have a distinguishing feature either in the form of given quality, reputation or other characteristics to be essentially attributable to its geographical origin or in form of a particular manufacturing process taking place in the place of its geographical origin that distinguishes it from that of the competitors^{viii} and it denotes to transmit information about the origin of goods and other characteristics such as product quality due to natural or human causes unique to a place or region.

Similarly, Handloom Mark is the Government of India's initiative to provide a collective identity to the handloom products in India and can be used not only for popularizing the hand-woven products but can also serve as a guarantee for the buyer that the product being purchased is genuinely hand woven from India. The Handloom Mark would therefore be a hallmark of passionate creative work that defines the product with clarity, distinguishes it from the competition, and connects it with customers. Thus, the Handloom Mark would be a representation of significant creative effort that clearly characterises the product, separates it from rivals, and links it with customers. Anyone involved in the production and marketing of Handloom products can register for Handloom Mark Scheme.

The Designs Act of 2000 vide clause 2 (a) defines 'article' as any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately^{ix}. This term encompasses 'handicrafts' and 'handlooms'. Vide clause 2 (c) of the same Act "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered. This design Act only pertains to a thing's design, not the object itself. Again vide clause 2 (d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two-dimensional or three-dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined by the "Trade and Merchandise Marks Act" or other Acts. It encompasses both "handicrafts" and "traditional handicrafts," albeit it should be emphasized that the Act only provides design rights to non-functioning components of the design piece. As a result, if a design is primarily utilitarian, it cannot dignify itself with a design right. If it contains utilitarian and visual elements, it may be given a design privilege.

Part 2(c) of the Copyright Act of 1957 defines "artistic works" as follows: (i) visuals like painting, sculpture, illustrations (along with a graph, map, plan, or diagram) on etching, or photographs, whether or not that work exhibits artistic qualities, (ii) creation of architecture, or (iii) some other aesthetic piece of labour considered as "artistic craftsmanship". The term "artistic workmanship" is not defined under the Copyright Act. The goal of granting copyright to a work of creative

handicraft is to safeguard the individual who sells products made by himself against copying, whether by manual, technology or otherwise.^x

Authorities have weighed in on what defines 'artistic craftsmanship,' which they perceive as a composite phrase that might relate to an 'art piece,' which normally refers to fine arts like paintings. But, a difference was found between 'artistic work of workmanship' and 'work of artistic craftsmanship', and the phrase 'piece of art' became infused with the second connotation as a result, meaning that the artistic merit of any work is insignificant, and hence 'handicrafts' are protected under Part 2 (c) of the same Act.

As a result, Part 4(b) of the Designs Act makes it illegal to transfer design rights to "traditional handicrafts" that are already on the public platform. But does the Act define what is "fresh" or "original"? Though the term "new" is not defined, Part 2(g) of the same Act states "original" with reference to a design as "...originating from the inventor of such design and including circumstances which, while ancient in themselves, are novel in the application." While "traditional handicrafts" designs are not protected under the Designs Act, their "new usage" may be. This essentially allows traditional designs to be abused.

Reiterating the previous parts' findings: 'Handicrafts' differ from 'traditional handicrafts,' which are also protected by Part 2 (a) of the Designs Act. Part 2 (d) of the same act does not apply to 'handicrafts' since they are protected under Part 2 (c) of the Copyright Act. 'Traditional handicrafts' may be granted design rights because they are not covered by the Copyright Act. However, because "traditional handicrafts" are already in the public domain, Part 4 (b) of the Designs Act prohibits assigning design rights to them; nonetheless, Part 2 (g) of the same Act provides design rights to anybody for "new use" of traditional styles, to the detriment of indigenous people.^{xi}

Handicrafts are legally protected under Indian intellectual property legislation through "The Geographical Indications of Goods (Registration and Protection) Act, 1999". This is because not all types of handicrafts are traditional or conventional in character, the conclusion that follows is based on the assumption that there is a difference between 'handicrafts' and 'traditional handicrafts.' The Task Force on Handicrafts suggested in 1989, the working definition for 'traditional handicrafts' in India as 'Handicrafts are products created manually, usually with the use of basic tools, and are generally aesthetic or traditional in character.'

It includes both useful and decorative items.' Following that, efforts were made to have 'traditional handicrafts' protected by national legislation as Geographical Indications (GIs), as allowed by the TRIPS Agreement. GIs are commodities that originate in a certain geographic location and are associated with a specific quality, reputation, or other attribute. GIs are a method of safeguarding community rights, or brand rights, in a community's shared history; they also safeguard consumer interests.

But do GIs provide any advantage or acknowledgment to a member of the group who has produced a very remarkable enhancement to an established product, such as handicrafts, for which GIs exist? Alternatively, do GIs exclude the concurrent presence of individual IPRs in traditional handicrafts, such as copyrights or industrial designs? The GI Act, 1999, which went into effect on September 15, 2003, offers a system for GI registration and clarifies the concepts of the authorized user and registered proprietor, both of which can commence an action for violation.^{xii}

With respect to handicrafts, Part 2(f) of the Act defines 'goods' as 'any individual who produces or manufactures such items and includes any individual who trades or engages in activities such as production, exploitation, making, or manufacturing of the items.'

The Act predicts increased protection and civil and criminal penalties for violations of notified items. But, nothing in the Act stops an authorized person from obtaining concurrent protection under the Designs Act of 2000 / the Act of Copyright 1957.

Further, Article one of the WIPO Intergovernmental Committee's brought provisions for the preservation of "traditional cultural expressions" or "expressions of folklore" which reads as follows: (A) "Traditional cultural expressions" or "folklore expressions" are any physical or intangible forms in which cultural traditions and learning are reflected, portrayed, or shown, and include the following expressions or mixtures thereof: (1) linguistic expressions, including narratives, epics, folklore, ballads, riddles, and others; words, signs, designations, and emblems; (2) musical expressions, including melodies and instrumental music; (3) action-based art, including dances, plays, festivities, ritual practices, and other appearances, if not reduced to physical matter; (4) quantifiable expressions, including art production, specifically illustrations and design features,^{xiii} which seem to be: (a) the products of innovative intellectual activity, which includes independent and collective innovation; (b) characteristics of a community's socio-cultural cultural and identity lineage; and (c) maintained, utilized, or evolved by society, or with persons with the right or duty to do so in full compliance with that industry's law and practices. Because people make up a community, it is thought that collective control would end up benefiting the person.

Taking a lead from patent law, why should craftspeople who make alterations to established forms of traditional art be denied any type of protection when patents of addition or utility patents could be granted for innovations? Giving a single person the right to claim inventorship resulting from an incremental change, may be detrimental to society's overall interests. However, this could be addressed by establishing a sui generis system, which might be a mix of GIs and auxiliary rights in traditional handicrafts. These additional rights could be comparable to copyright in nature. But at the same time, additional rights will encourage community creativity.^{xiv} The idea of supplementary rights is not new, but it has never been applied to traditional handicrafts. A database of art from prior times or particular traits of older art in traditional handicrafts, similar to the UNESCO seal project, might be discovered and constructed. This would aid in recognizing and understanding the significance of certain artists' contributions.^{xv}

A measuring scale of protections may be established, with durations ranging from 5 to 50 years, with the lower threshold being even less than the period of design Acts and the higher limit being fewer than the duration of copyright from the date of the award. The answer, at the same time, is not as straightforward as it appears, because the word "quantum of contribution" tends to refer to the value-added over and above the customary cycle. In this case, the invention might deviate from the recognized art form. Can a tradition-based invention that deviates from the norms be accorded GI protection notwithstanding the deviation and whether such a divergence worthy of that duration of protection are some of the questions seeking the answer before GI can recognize the unique properties of GI-protected products, which is the scope of further research on this subject.

Conclusion:

GI registration has been shown to be a crucial instrument for competitiveness in the domestic and international market because the handloom sector is one of the crucial components of the Indian textile industry and Indian textile export. Fast changes in fashion trends have contributed to both hurdles and an increase in demand for handlooms in this dynamic era. The handloom industry is now dealing with problems related to the socioeconomic circumstances of the weavers, the handloom industry's profitability, the difficulties the weavers confront, the availability of financial support, and creative marketing strategies. Therefore, it is imperative that we consider these challenges and create methods that could aid the handloom business and weavers in improving their current situation. The difficulties may be somewhat lessened by legal protection, but it is not a complete fix. They need both legal and economic safeguards, which calls for a combined strategy of "legal and economic protection." Sui generis protection of GIs in India is still being developed, and there aren't many hard numbers to back up its effectiveness.

Realizing a product's economic potential begins with its registration as a GI. Even if it is not a requirement, registration is nonetheless the strongest possible proof of its legality.

Small-scale farmers find it challenging to comprehend the advantages of GI registration. It has been found that GI registration has no effect on individual weavers' awareness or marketing influence. Therefore, spreading knowledge prior to registration is essential if you want to take advantage of a sui generis protection scheme. The Registered Proprietor and Authorized User categories are clearly defined under the GI law. The Registered Proprietor does not also have the right to use the GI tag under the rights granted by registration. According to Section 17 of the GI Act, registration as an authorised user is required in order to obtain the same. Undoubtedly, one of the main causes of the benefits of GI not being realised is a lack of registered Authorized Users.

The socioeconomic stability of the producers is not ensured by the simple GI tag. The master weaver often handles the selling of these handloom goods. As a result, the weavers are reliant on middlemen or master weavers for both sales and raw supplies. Real benefits do not reach the actual manufacturer in the absence of a robust business model to market and promote GI products.

Even after a decade of registration, the intended benefits for these handloom products have not materialised due to a lack of an effective system of marketing and brand promotion.

The system's emphasis must change from merely providing GI designation to really enforcing it by developing a successful system of brand promotion, marketing, and benefit sharing.

Recommendations:

The issuance of a GI tag alone does not enable craftsmen to support themselves. In the home setting, GI's purview extends to the protection of traditional knowledge and traditional cultural manifestations in addition to origin-based products. It is crucial to establish a plan that is sector-specific, comprehensive, and development-oriented in a country with a geographically vast and diversified landscape like India, where each State produces a wide variety of agricultural, handicraft, and handloom products, among other things.

The handloom industry is in decline mostly as a result of a dearth of law enforcement, a lack of a planned policy architecture, poor market building and branding, and insufficient data collection.

Even the most beautiful traditional craft abilities need careful adaptation, excellent quality control, correct sizing, and appropriate pricing to establish and retain a position in the market.

The GI regime in India has been largely successful in preserving traditional crafts, but it hasn't done much to support innovation among members of indigenous groups. This is contrary to the GI regime's own goals of preventing underdeveloped creativity and imagination in the communities and ensuring that traditional handicrafts maintain a competitive advantage. To provide targeted and efficient protection, the creation of a National Level Handloom Protection and Promotion Council may be helpful.

Every step of the GI protection system, including the pre-and post-registration phases, requires attentiveness. The knowledge of their rights and the methods for enforcing them will be helpful to producers of GI-registered items, but consumers will understand the value of Geographical Indications once they are made aware of the traits linked to the distinctiveness of the product. In order to decrease instances of infringement, raising awareness is also essential. The commercial use of GIs will consequently rise as a result of this raised awareness. The existing Cluster Development Programme needs to be redesigned with a better alignment towards weavers' needs.

Understanding the significance of the invaluable handloom treasures, the creation of a digital depository of Handlooms along the lines of the Traditional Knowledge Digital Library (TKDL) will assist in promulgating its value and protecting inter-generational craft skills.

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Notes

ⁱ In 1999, India passed the Geographical Indications Act, which has the ability to stimulate rural development, create wealth, and conserve traditional knowledge in developing countries.

ⁱⁱ Adithya R Nair discusses the contribution of the Indian handloom industry to the fashion industry from the standpoint of Atmanirbhar Bharat.

ⁱⁱⁱ Dibyendu Bikash Datta and Sankhadip Bhattacharyya examine the difficulties and potential of the Indian handicraft sector.

^{iv} Adithya R Nair discusses the contribution of the Indian handloom industry to the fashion industry from the standpoint of Atmanirbhar Bharat.

^v Soumya Vinayan's article Intellectual Property Rights in the Handloom Sector: Challenges in Implementing the Geographical Indications Act.

^{vi} B. Syama Sundari wrote an article titled Handlooms Are Dying - and It's Due to Our Failure to Protect Them

^{vii} The case study of Solapur, Maharashtra by Lalitha Kamath.

^{viii} The Handloom Reservation Act should be changed to protect weavers from famine, according to NGOs by Samdani MN.

^{ix} Section 2(a), "The Designs Act of 2000"

^x Section 2(c), "The Copyright Act, 1957"

^{xi} Section 2 in the Designs Act, 2000- India Kanoon.

^{xii} Conventional Handicrafts Protection Under Indian Intellectual Property Laws by J Sai Deepak.

^{xiii} WIPO's Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge, and Folklore

^{xiv} Intellectual Property Rights-Laws and Practices.

^{xv} GIs, Traditional Handicrafts and Incentives for Individual Innovations.

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