

PROTECTION OF GEOGRAPHICAL INDICATIONS (GI) IN SRI LANKA: A CRITICAL LEGAL ANALYSIS

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ABSTRACT

Sri Lanka is renowned for its ownership of numerous esteemed Geographical Indications (GIs), a testament to its rich cultural heritage and diverse agricultural products. However, the proliferation of counterfeit indications and illicit practices poses a significant threat to the integrity and value of these GIs in the global marketplace. As the nation of origin, Sri Lanka bears a paramount responsibility to safeguard these GIs, both domestically and internationally, as mandated by the Intellectual Property Act and ratified treaties.

Against this backdrop, this research seeks to conduct a comparative evaluation of Sri Lanka's Intellectual Property Law regime, specifically focusing on the adequacy of legal provisions governing geographical indications in protecting existing GIs. Employing a qualitative research methodology, this study draws upon a comprehensive analysis of primary and secondary legal resources.

By juxtaposing the domestic legal framework with international standards and practices, this research endeavours to draw conclusions regarding the effectiveness of existing protection measures and proposes targeted reforms where necessary. The aim is to formulate tailored recommendations for enhancing Sri Lanka's GI regime through the worldwide exhaustive examination of geographical indication regimes.

This research paper not only contributes to academic discourse but also serves as a practical guide for policymakers and stakeholders involved in the preservation and promotion of Sri Lanka's unique GIs. Given the urgency of addressing the challenges faced by GIs in the contemporary global trade landscape, this study underscores the importance of timely action and informed decision-making in ensuring the continued prosperity of Sri Lanka's geographical indications.

KEYWORDS: Geographical Indication, Intellectual Property, TRIPS, WIPO, WTO

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1. INTRODUCTION

Geographical Indications (GIs) serve as crucial identifiers of a product's origin, embodying its unique qualities and cultural significance. In Sri Lanka, the legal framework governing GIs plays a pivotal role in protecting and promoting the country's diverse cultural heritage and agricultural products (Silva, 2015). This section examines the laws directly addressing GIs in Sri Lanka, beginning with the Intellectual Property Act. Winston Churchill's famous assertion about Champagne underscores the importance of product origin, sparking discussions on the intellectual property landscape. While intellectual property laws safeguard against unfair competition and false indications, the concept of Geographical Indication (GI) provides a verbatim answer to the question of a product's origin. GIs identify a product's geographical origin also by adding value by conveying its specialty, quality, and reputation but also as serving as a cultural emblem. GIs serve as a marketing tool and economic driver, gaining worldwide recognition over the past two decades, serving as both an intellectual right and a theme of industrial property protection (Askari, 2018). Isolated villages known for their GI products have become landmarks on world maps, emphasising the market-oriented role of GIs in achieving economic growth. Particularly in developing countries, GIs are intertwined with socio-cultural values, supporting rural livelihoods and preserving centuries-old sub-cultures. International recognition and protection, despite the global recognition of GIs, present challenges in their international protection. While some countries employ *sui generis* legislation to protect GIs, others rely on unfair competition and consumer rights protection laws (Rahmah, 2016). However, differences in legal frameworks among countries pose obstacles to international protection, highlighting the need for a harmonised approach (Abeysekara, 2011). Challenges in Sri Lanka's GI protection system can be considered *sui generis*, with the Intellectual Property Act providing special protection to GIs (Silva, 2015). However, existing provisions lack clarity, hindering the establishment of a comprehensive GI protection regime. The absence of provisions related to GI registration within the existing legal framework has led to various issues, including difficulties in protecting and promoting valuable GIs both domestically and internationally.

Strengthening the GI regime in Sri Lanka is imperative to ensure comprehensive protection and effective management of geographical indications domestically and internationally. This section highlights the need to address the deficiencies in the current legal framework, propose strategies for enhancing GI protection, and explore international best practices to promote the sustainable development of Sri Lanka's cultural heritage and economic interests (Wijesinghe, 2015). Geographical Indications (GIs) serve as crucial mechanisms to protect products originating from specific geographical locations, safeguarding their cultural heritage and economic interests. In Sri Lanka, the legal framework governing GIs faces notable challenges, particularly concerning registration procedures and international recognition. This section delves into the laws directly addressing GIs in Sri Lanka, primarily focusing on the Intellectual Property Act and its related provisions. The Intellectual Property Act, particularly Section 161, provides a specialised form of protection for GIs in Sri Lanka. This section stipulates that a GI denotes an indication identifying goods as originating from a specific territory where their quality, reputation, or other characteristics are essentially linked to their geographical origin. Additionally, various sections within the Intellectual Property Act, such as Sections 103, 160, 142(3), and 138(2), offer protection for GIs through trademark, unfair competition, certification marks, and collective mark provisions. Despite these legal provisions, challenges persist in establishing a comprehensive GI protection regime in Sri Lanka. The existing laws are often vague and lack clarity, hindering effective protection and management of GIs. Therefore, it becomes imperative to undertake extensive research on global geographical indication regimes and evaluate the mechanisms in Sri Lanka to address these shortcomings comprehensively. This research is important to various stakeholders, including policymakers, trade negotiators, producers, lawyers, economists, and individuals interested in the Sri Lankan economy. By identifying the deficiencies within the current GI regime, the research aims to propose strategies for establishing an effective geographical indication regime in Sri Lanka. This involves exploring potential reforms and policy measures to strengthen GI protection within the country's borders and enhance its competitiveness in international markets. The

Intellectual Property (Amendment) Act, No. 8 of 2022, introduced significant changes to the intellectual property (IP) framework in Sri Lanka. One of the key areas impacted by this amendment is the regulation of Geographical Indications (GIs). Thus, delve into what GIs are, how they are regulated under the amendment, the importance of these changes, and potential areas where further amendments might be needed. The Intellectual Property (Amendment) Act, No. 8 of 2022, made several changes to enhance the protection of GIs in Sri Lanka. Key provisions include as follow registration Process which is the amendment streamlined the registration process for GIs, making it more accessible and efficient. This involves defining clear criteria for what constitutes a GI and the process for applying and maintaining registration. Scope of Protection is the Act expanded the scope of protection for registered GIs, ensuring that not only the name but also symbols and other identifying features are protected against misuse and imitation. Enforcement mechanism discussion the amendment introduced stronger enforcement mechanisms, providing authorities with better tools to prevent and penalise the unauthorised use of GIs. This includes administrative, civil, and criminal remedies. International Alignment: in the Act aligns Sri Lanka's GI protection regime more closely with international standards, such as those outlined in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This alignment is crucial for facilitating international trade and recognition of Sri Lankan GIs abroad.

Furthermore, the study seeks to investigate international recommendations and best practices that Sri Lanka can adopt to improve its GI regime and gain recognition for its geographical indications on a global scale. Through addressing these research questions, this study aims to contribute valuable insights and recommendations to inform policy decisions and promote the sustainable development of Sri Lanka's cultural heritage and economic interests, thereby ensuring the comprehensive protection and effective management of geographical indications within Sri Lanka and in international operations.

2. METHODOLOGY

The methodology employed in this research ensures a systematic and thorough examination of the governance of Geographical Indications (GIs) in Sri

Lanka by integrating scholarly opinions and employing a mixed-method approach that combines qualitative and quantitative data sources (Dagne, 2014). This comprehensive methodology encompasses several key stages, each contributing to a deeper understanding of the current landscape and potential areas for improvement in Sri Lanka's GI regime. The initial phase of the research involves an extensive review of existing literature on GIs, legal mechanisms, international standards, and best practices related to GI protection (WIPO, 2019). This literature review serves as the foundation for identifying research gaps and formulating pertinent research questions (March, 2007). Drawing from academic journals, books, legal documents, reports, and online databases, this review provides insights into the challenges and opportunities surrounding GI governance in Sri Lanka and other relevant jurisdictions. Following the literature review, primary data is collected through structured interviews and surveys with key stakeholders involved in GI governance in Sri Lanka. Stakeholders include government officials, legal experts, industry representatives, and academic researchers. These interviews and surveys aim to gather firsthand insights into the current status of GI protection, challenges faced, and potential avenues for improvement. The selection of participants is based on their expertise and involvement in GI-related activities, ensuring a diverse range of perspectives are captured. Subsequently, a comprehensive legal analysis is conducted to examine the existing legal framework governing GIs in Sri Lanka. This involves reviewing relevant legislation, regulations, and judicial decisions related to GI protection, with a focus on identifying gaps, inconsistencies, and areas for improvement. The analysis also considers scholarly opinions and international legal frameworks to provide a broader context for evaluating Sri Lanka's GI regime. A comparative analysis is then undertaken to compare Sri Lanka's GI regime with international standards and best practices. This comparative study particularly emphasises examining well-established systems for GI protection in other countries. Insights derived from this comparison offer valuable strategies and mechanisms for enhancing Sri Lanka's GI regime, including potential reforms and policy recommendations. Methodologically a deductive reasoning approach is adopted, grounded in legal theories applicable in Sri

Lanka and globally, to identify theoretical underpinnings governing areas related to GIs. Utilisation of both primary and secondary sources is emphasised, with primary sources presenting the law itself and secondary sources providing supplementary elucidation and details on similar jurisdictions. In terms of research style, the planned endeavour progresses through three distinct stages: explanatory, descriptive, and critical analysis. The explanatory phase delves into intellectual property law in Sri Lanka with a specialised focus on GIs. Meanwhile, the descriptive stage meticulously analyses laws in other jurisdictions, thereby facilitating a comprehensive understanding of the research scope. Finally, the critical analysis evaluates the adequacy of Sri Lankan jurisprudence in resolving issues within the intellectual property law domain and proposes reforms to address gaps in governing statutes. This methodology ensures a rigorous and comprehensive analysis of Geographical Indications governance in Sri Lanka, facilitating the development of well-informed recommendations tailored for policymakers and stakeholders.

3. RESULTS AND DISCUSSION

This analysis delves into the existing laws on geographical indications (GIs) in Sri Lanka, framed by insights from Prof. Althaf Marsoof's publication, "Advancing Geographical Indication Protection in Sri Lanka: Towards Legislative Reforms and Institutional Enhancements" (Marsoof, 2023). The discussion underscores the need for a robust legal framework to safeguard GI rights, evaluating current protection mechanisms, and identifying areas for improvement. By comparing Sri Lanka GI protection regime with advanced jurisdictions, such as the European Union (EU), the analysis highlights significant gaps and proposes lessons for strengthening the legal infrastructure in Sri Lanka.

Laws directly addressing GIs in Sri Lanka Intellectual Property Act No. 36 of 2003 is the primary legislation governing GIs in Sri Lanka. This Act defines a GI in Section 103 as indication which identifies any goods as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. This definition aligns with Article 22.1 of the TRIPS

Agreement and extends protection to agricultural products comparable to wines and spirits. Section 160 of the IP Act prohibits unfair competition practices that are contrary to honest practices in industrial or commercial matters. Additionally, Section 186(1)(d) addresses false trade descriptions, criminalising the application of misleading geographical indications. The Act also provides mechanisms for protecting GIs through collective marks (Section 138) and certification marks (Section 142). Marsoof (2023) highlights that while the IP Act provides a foundational framework for GI protection, its implementation faces significant challenges. The lack of a centralised registration system impedes effective enforcement and leaves many GIs inadequately protected. For instance, only Ceylon Tea and Ceylon Cinnamon benefit from a regulated protection mechanism through the IP Act, supported by the Tea Board's trademark licensing. The scholarly consensus, including opinions from Yatawara & Rajapaksha (2008) and Wijesinghe (2015), suggests that indirect protections offered by unfair competition laws, consumer protection laws, and the common law principle of passing off, although beneficial, are insufficient for comprehensive GI safeguarding. These laws do not establish individual industrial property rights over GIs but prohibit unauthorised use that could mislead consumers.

Sri Lanka is a member of the World Trade Organisation (WTO) and a signatory to the TRIPS Agreement, which mandates minimum standards for GI protection. However, the country has not ratified the Geneva Act under the Lisbon Agreement, missing the opportunity for direct international registration of GIs without domestic registration requirements. Participation in international agreements like the World Intellectual Property Organisation (WIPO) underscores Sri Lanka's commitment to aligning with global standards. Yet, the limited engagement with instruments such as the Madrid Protocol for the international registration of marks reflects gaps in leveraging international mechanisms for GI protection.

The EU's GI protection system is widely regarded as one of the most robust in the world, exemplified by comprehensive registration mechanisms and strict enforcement policies. Among the key-cases, such as *Chateau de Beaucastel v. R & D Co*, highlight the EU's stringent approach to protecting GIs. The EU

framework includes a centralised registration system for GIs, facilitated by regulations such as Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs. This regulation ensures that GIs are protected and enforced uniformly across all member states. However, the lessons that Sri Lanka can draw from the EU's legal framework vividly discuss in Marsoof's research. Centralised registration system where the EU's centralised approach to GI registration ensures clarity, consistency, and ease of enforcement. Then establishing a similar system in Sri Lanka would provide a structured mechanism for registering and protecting GIs. Next point bring into the table is independent regulatory bodies. The EU's system benefits from independent bodies that oversee GI protection and enforcement. Sri Lanka could enhance its framework by creating independent regulatory authorities dedicated to GIs, similar to the EU's bodies. Strict enforcement and clear guidelines one last opinion the EU legal framework offers clear guidelines and strict enforcement measures. Adopting such measures would ensure that GIs in Sri Lanka are adequately protected against misuse and infringement. Other than international recognition and registration open the lime light to the EU's participation in international agreements like the Lisbon Agreement allows for the global recognition and protection of its GIs. By ratifying international agreements like the Geneva Act, Sri Lanka could facilitate the global recognition of its GIs, providing broader protection and promoting international trade. Marsoof's publication highlights the inadequacies in Sri Lanka current GI protection regime and outlines a comprehensive roadmap for legislative reforms and institutional enhancements. By learning from the EU's robust GI protection system, Sri Lanka can strengthen its legal framework to better safeguard the rights and interests of local producers. Enhanced GI protection would not only preserve cultural heritage and traditional knowledge but also bolster economic growth by promoting local products in international markets. The recent amendments to the Intellectual Property Act, No. 8 of 2022, mark a significant step towards achieving these goals by offering clearer guidelines and stronger protections for GIs. However, further reforms are needed to establish a more comprehensive and effective GI protection system in Sri Lanka.

4. RECOMMENDATION

Flowing from the examination of Sri Lanka's current legal framework governing Geographical Indications (GIs) and considering insights from international practices, several recommendations emerge for establishing an effective GI regime in the country (Harvers, 2024).

Current legal system could be enhanced by strengthening existing provisions for GI registration. Although Sri Lanka has statutory provisions under the Intellectual Property Act No. 36 of 2003 and its relevant amendments for GI registration, these provisions need to be strengthened and more effectively implemented. Current challenges include inadequate enforcement mechanisms and lack of awareness among stakeholders to improve and enhance the current registration procedures to ensure clarity and efficiency. This could involve simplifying the process, reducing costs, and providing clear guidelines on the requirements and benefits of GI registration.

Establishing an independent regulatory body could create an independent regulatory authority dedicated to overseeing GI registration and enforcement. This body would maintain the registry, monitor compliance, and address infringements. Also, that can introduce comprehensive legal and procedural reforms to ensure a robust GI protection system. It is crucial to incorporate detailed procedural aspects and reforms.

Transparent and Impartial Procedures will ensure that the GI registration and enforcement processes are transparent and impartial, adhering to due process. This includes setting clear guidelines and timelines for registration, objections, and appeals. Leverage expertise can involve in legal professionals, economists, and international traders in the development of GI-related policies and procedures. That will ensure comprehensive and effective outcome aligned with international standards and practices. That could consider the evolving global landscape surrounding GIs. Sri Lanka should align its legal framework with international standards and practices. It is required to ratify the Geneva Act with the knowledge of exploring membership in the Geneva Act to facilitate the international registration of GIs, ensuring broader recognition and protection in global markets.

Active participation in international agreements and engagement in international forums and organisations dedicated to the protection of intellectual property and GIs, such as the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO), is required.

It is important to familiarise to use best practices from the European Union (EU). EU has one of the most robust GI protection systems, providing valuable lessons for Sri Lanka. Implementation of a centralised system for GI registration similar to the EU will ensure consistency and ease of enforcement across different regions and product categories. Steps should be taken to adopt strict enforcement measures to protect GIs from misuse and infringement, drawing from the EU comprehensive regulatory framework. Consumer awareness needs to be enhanced through effective promotion strategies, ensuring that the benefits of GIs are widely understood and appreciated. Additional Recommendations are to support small producers to assist small and medium-sized enterprises (SMEs) and local producers in navigating the GI registration process and maximising their economic potential.

It is recommended to establish a Dedicated Support Office within the Ministry to guide and assist with GI registration, offering resources and financial support. Cooperatives and associations can encourage the formation of cooperatives or associations to help small producers pool resources and strengthen their market presence. Enhancing technological integration leveraging modern technology to improve the traceability, authentication, and marketing of GI products, is also recommended.

Another common usage is implementation of blockchain technology. Blockchain technology for a transparent and tamper-proof system to track GI products from origin to market is required. Digital platforms and QR codes lead to develop digital platforms for registration and real-time updates, and use QR codes would enable consumers to verify the authenticity and origin of GI products easily.

Establishing monitoring and evaluation mechanisms will ensure that the GI protection system remains effective and responsive to new challenges and opportunities. Dedicated monitoring body can be set up to oversee the implementation and enforcement of GI regulations, conducting regular assessments and

consultations with stakeholders. Annual reports published on the status and impact of GIs, highlight the successes and areas that need attention.

The comprehensive examination and updating of Sri Lanka's legal framework for GIs should incorporate recent legislative changes, international commitments, evolving best practices, and specialised dispute resolution mechanisms to ensure effective protection and promotion of geographical indications. Expanding upon these aspects with updated legal provisions will strengthen Sri Lanka's GI regime, ensuring comprehensive protection for its valuable geographical indications both domestically and internationally. The recent amendments to the Intellectual Property (Amendment) Act, No. 8 of 2022, have made substantial improvements, but further refinements are necessary to enhance the protection and utilisation of GIs.

5. CONCLUSION

Addressing the deficiencies and challenges in Sri Lanka's current geographical indication (GI) regime requires a multi-faceted approach, encompassing legal reforms, international engagement, and stakeholder collaboration. By incorporating international recommendations and best practices, Sri Lanka can establish an effective geographical indication regime to protect its valuable GIs and promote them both domestically and internationally. Through this research, valuable insights and recommendations are provided to inform policy decisions and contribute to the sustainable development of Sri Lanka's cultural heritage and economic interests. As highlighted by Danial Gervise, every nation possesses its geographical identity, which is an undeniable resource, emphasising the importance of protecting geographical indications for the benefit of the entire global community (Gervise, 2010). Sri Lanka, as a developing country, boasts a variety of natural resources with significant economic value, such as sapphire. While the Intellectual Property Act No. 36 of 2003 addresses GI-related issues, including interpretation, prevention, and protection, it lacks provisions for comprehensive GI registration, hindering international recognition and protection. The failure to ratify international instruments and the lack of professionalism among intellectual property law practitioners further impede the development of an effective GI framework in Sri Lanka. Additionally,

deficiencies in product specifications, controls, external certification, and accreditation for certification bodies contribute to the inefficiency of Sri Lanka's GI system. To overcome these challenges, Sri Lanka must consider either ratifying the Geneva Act to the Lisbon Agreement or establishing a dedicated GI register. A thorough comparison with well-established GI regimes, such as that of the European Union, highlights the need for clearer and more efficient procedures in Sri Lanka's GI framework. Therefore, it is imperative for Sri Lanka to implement an effective geographical indication regime tailored to its specific needs. Through such measures, Sri Lanka can enhance the protection and promotion of its geographical indications, contributing to both economic growth and cultural preservation. The Intellectual Property (Amendment) Act, No. 8 of 2022, marks a significant step forward in the protection and promotion of Geographical Indications (GIs) in Sri Lanka. By refining the legal framework and aligning with international standards, the amendments provide a robust foundation for leveraging GIs as tools for economic development and cultural preservation. Building on this solid foundation, the proposed recommendations aim to further enhance the GI protection regime. Increasing public awareness, providing targeted support to small producers, strengthening international cooperation, integrating technological advancements, and ensuring continuous evaluation are essential steps. Implementing these measures will allow Sri Lanka to fully realise the economic and cultural benefits of its unique Geographical Indications. By taking these proactive measures, Sri Lanka can enhance the protection and utilisation of GIs, contributing to sustainable development and global recognition of its rich heritage. Continued efforts in these areas will be key to maximising the benefits of GIs, ensuring that local communities thrive and that Sri Lanka's cultural and geographical heritage is celebrated worldwide.

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