

NEPAL'S POSITION ON THE GEOGRAPHICAL INDICATIONS PROTECTION DEBATE OF NORTH AND SOUTH¹

*Laxmi Sapkota**

ABSTRACT

The World Trade Organization (WTO) member countries under the Trade-Related Aspects of Intellectual Property Agreement may protect their Geographical Indications (GIs) through either *sui generis* laws, trademark laws, or laws focusing on business practices. The protection of GIs by trademark or *sui generis* laws is considered the United States (US) and European Union (EU) debate, respectively. This article does not contribute a novel perspective to this ongoing debate; instead, it aims to examine the prevailing stand of Nepal and the intriguing juxtaposition of a recognised Collective Mark Registration Related Directory 2010 AD operating outside the bounds of legal recognition within the established Patent Design and Trademark Act, 1968 AD and the concurrent recognition of GIs within the National Intellectual Property Policy, 2017 AD framework. The study's purpose is to assess Nepal's position on protecting GIs. Nepal has registered seven collective marks through the Collective Mark Directive, which implies that it is inclined to the US. In contrast, it has shown interest in protecting the GIs through separate laws denoting its inclination towards the EU. In the context of decolonising the prevailing notion of aligning with either the US or the EU, Nepal necessitates the drafting of *Utpati Mool* or *Maulik (Sui Generis)* laws to safeguard its GIs goods. Nepal is not inclined toward external models (US or EU) and remains impartial; inclination is unintentional rather than deliberate. Nepal is on the path of drafting laws on intellectual property; therefore, this research could contribute to developing a comprehensive *Maulik* law for its GIs protection.

* Ph.D. Faculty of Law, Tribhuvan University, Nepal; Associate Professor, Kathmandu School of Law, Nepal.

¹ Received 'Best Paper of the Session' in the South Asian Post Graduate Conference 2023 organized by the Faculty of Law, University of Colombo, Sri Lanka, Maharashtra National Law University Mumbai, India, Jindal Global Law School, O.P. Jindal Global University Mumbai, India, Symbiosis Law School, Nagpur, India, Eastern University, Jigme Singye Wangchuk School of Law, Bhutan, Kathmandu School of Law, Nepal on 27 and 28 November 2023.

1. INTRODUCTION

Geographical Indications (GIs) refer to a sign that identifies the goods or products manufactured, made, or produced in a particular territory or region, and the products or goods are there because of the place.² In other words, GIs indicate the geographical origin of the goods or products.³ GIs are considered separate intellectual property in a country like the European Union. GIs are considered a subset of a trademark (intellectual property) in America.

Various terms were used to denote the GIs in various international instruments. Chronologically, The Paris Convention for the Protection of Industrial Property, 1883 AD (Paris Convention) comprises “Indication of Source”,⁴ Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891 AD (Madrid Agreement) has incorporated the word indication of the source.⁵ The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958 AD (Lisbon Agreement)⁶ embraces the word Appellations of Origin (AO).⁷ The Lisbon Agreement is extended to The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, 2015 AD, which contains both terms ‘Appellations of Origin’ and ‘Geographical

² A Zappalaglio, *Transformation of Eu Geographical Indications Law: The Present, Past and Future of the Origin Link* (Routledge, Chapman & Hall, Incorporated 2023).

³ Fenny Wulandari and others, ‘Sui Generis System: GI Protection for the Herbal Product in Indonesia as Communal Property Right’ (2023) 9(1) Cogent Social Sciences <<http://dx.doi.org/10.1080/23311886.2023.2176989>> accessed 28 March 2024.

⁴ *Paris Convention for the Protection of Industrial Property*, 1883 amended on September 28, 1979, <www.wipo.int/wipolex/en/text/287556>accessed 27 January 2024.

⁵ Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891 Act and amended on October 31, 1958, <www.wipo.int/wipolex/en/text/287556> accessed 27 January 2024.

⁶ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, and amended on September 28, 1979, <www.wipo.int/wipolex/en/text/285838>accessed on 27 January 2024.

⁷ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, and as amended on September 28, 1979, <www.wipo.int/wipolex/en/text/285838>accessed on 27 January, 2024.

Indications'. Finally, The Trade-Related Aspects of Intellectual Property, 1995 AD (TRIPS), uses "Geographical Indications".

There are different mechanisms for protecting GIs internationally. It may be protected by a bilateral agreement concluded between countries, the World Intellectual Property Organization's Lisbon system for the international registration of an Appellation of Origin or the Madrid System for the international registration of marks.⁸

The Trade-Related Aspects of Intellectual Property (TRIPS) Agreement signed on April 15, 1994 AD came into effect on January 1, 1995 AD. This multilateral Agreement states that a country can protect its GIs by making laws. The Agreement has globalised⁹ GIs and set out different levels of protection, including a minimum level of protection for goods embodying GIs¹⁰ to prevent the public from being misled and to avoid unfair competition¹¹ and an "enhanced level of protection" is provided for wines and spirits¹² that embody a GIs, but with some exceptions.¹³

The EU demanded the inclusion of GIs in TRIPS, but the US resisted. This resulted in the compromise provision in the TRIPS.¹⁴ It neither specified

⁸ Laxmi Sapkota, 'Evolution of Geographical Indication Law in Nepal : A Way Forward' [2021] Nepal Bar Council Journal 383.

⁹ W V Caenegem and J Cleary (eds), *The Importance of Place : Geographical Indications as a Tool for Local and Regional Development* (Springer International Publishing 2017) <http://dx.doi.org/10.1007/978-3-319-53073-4> accessed 22 March 2024.

¹⁰ Trade Related Aspects of Intellectual Property, art. 22 (1994) <www.wto.org/english/docs_e/legal_e/27-trips.pdf> accessed 27 Jan. 2024.

¹¹ Shayerah Ilias Akhtar, Renée Johnson and Vivian C Jones, 'Transatlantic Trade and Investment Partnership (T-TIP) Negotiations' (Congressional Research Service (CRS) 2016) <<https://crsreports.congress.gov/product/pdf/R/R43387>>, accessed 5 March 2024.

¹² Trade Related Aspects of Intellectual Property, art. 23 (1994) <www.wto.org/english/docs_e/legal_e/27-trips.pdf> accessed 27 Jan. 2024.

¹³ Shayerah Ilias Akhtar, Renée Johnson and Vivian C Jones, 'Transatlantic Trade and Investment Partnership (T-TIP) Negotiations' (Congressional Research Service (CRS) 2016) <<https://crsreports.congress.gov/product/pdf/R/R43387>> accessed 5 March 2024.

¹⁴ William van Caenegem and Jen Cleary (eds), *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer Link 2017) <<https://link.springer.com/book/10.1007/978-3-319-53073-4>> accessed 24 March 2024.

the preferred legal means for the protection of the GIs nor even identified the possible option, leaving member states to choose. It is also said that the EU and the USA failed to attain their full IP agenda in the Uruguay Round.¹⁵ or even called the ‘war on terroir’ at the international level.¹⁶

According to TRIPS, the member country may safeguard their GIs through either *sui generis* laws, trademark laws (certification or collective mark), or laws focusing on business practices.

The Latin term *sui generis* means only exists in one kind¹⁷ or literally as *of its kind* and is used in English to mean *unique*.¹⁸ The GIs protection through *sui generis* means is associated with qualities or reputations linked to their origin. The protection also includes indications for identification beyond just geographical names and encompasses a specific territorial area of production, which may not be the same as administrative boundaries. The ownership rights for these products are community-based rather than individual-based. Producers subjectively determine the qualitative factors associated with these products, and protection requires only one of these aspects.¹⁹

Trademark protection of GIs refers to protecting the GIs through collective marks or certification marks. The rights go to the name of a group of persons or associations as private property, and they can transfer ownership to others. South Asian countries like Afghanistan, Bhutan, Maldives, and Nepal protect their GIs through collective marks.

¹⁵ Hazel Moir, ‘Geographical Indications: An Assessment of EU Treaty Demands’ in Annmarie Elijah and others (eds), Australia, the European Union and the New Trade Agenda (ANU Press 2017) <www.jstor.org/stable/j.ctt1sq5ttx.12> accessed 3 August 2024.

¹⁶ Armelle Mazé, ‘Geographical Indications as Global Knowledge Commons: Ostrom’s Law on Common Intellectual Property and Collective Action’ (2023) 23 Journal of Institutional Economics 1 <<https://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/20165>> accessed 16 March 2024.

¹⁷ Dhifa Nadhira Syadzwinah and Others, ‘Characteristics of Legal Science as *Sui Generis*’ (2023) 23 Nurani Journal Kajian Syaria dan Masyarakat 261.

¹⁸ Grammarist, “*Sui generis*” (Grammarist, n.d.) <<https://grammarist.com/usage/sui-generis/#:text=%7C%20Grammarist-,%7C%20Usage,unique%20in%20a%20cert,ain%20way,>>> accessed March 26, 2024.

¹⁹ Miranda Risang, Laina Rafianti and Helitha Novianty Muchtar, ‘Inclusive Rights to Protect Communal Intellectual Property: Indonesian Perspective on Its New Government Regulation’ (2023) 9 Cogent Social Sciences.

A country may protect its GIs through laws focusing on business practices. Some countries may even give GIs and Collective marks space in their unfair competition laws. For example, China has both kinds of protection available.

The GIs protection through *sui generis* and trademark laws is considered a North-South debate.²⁰ The North is understood as the Old World (Europe), whereas the South is the New World (Argentina, Australia, Canada, Chile, New Zealand, and the United States). The North protects its GIs through *sui generis* laws, whereas the South protects through trademark laws, especially collective or certification mark protection.²¹ Countries from the Old and New World are divided on this issue. One side claim absolute protection, which is a higher level of protection for all GIs around. In contrast, the other side supports GIs protection to the extent of consumer confusion by analogy to trademark protection.²²

The protection of GIs through collective mark and *sui generis* GIs laws has a similar objective. Still, there are a few fundamental differences between them in terms of origin, ownership of rights, and terms of protection.

The US regards GIs as a subset of trademarks and protects them through trademarks (certification or collective mark). In contrast, the EU considers GIs independent intellectual property rights and has a separate legal protection mechanism.²³ It is argued that the US had a pro-protectionist approach to TRIPS and consistently opposed the inclusion of GIs

²⁰ Sabine Duvaléix and others, 'Geographical Indications and Trade: Firm-Level Evidence from the French Cheese Industry' (2021) 102 Food Policy 102118 <www.sciencedirect.com/science/article/abs/pii/S030691922100097X?via%3Dihub> accessed 22 March 2024.

²¹ Léon E Dijkman, 'Of Treats and Treaties: The Forgotten Chapter of European Geographical Indications Law' in Eleonora Rosati and Hayleigh Bosher (eds), *Developments and Directions in Intellectual Property Law: 20 Years of The IPKat* (Oxford University Press 2023) <<https://doi.org/10.1093/oso/9780192864475.003.0029>> accessed 3 December 2023.

²² Xiaoyan Wang, 'Absolute protection for geographical indications: protectionism or justified rights?' (2018) 8(2) *Queen Mary Journal of Intellectual Property* 73 <<http://dx.doi.org/10.4337/qmjip.2018.02.01>> accessed 22 March 2024.

²³ Xinzhe Song, 'The Role Played by the Regime of Collective and Certification Marks in the Protection of Geographical Indications-Comparative Study of Law and Practice in France, the EU and China' (2018) 21 *The Journal of World Intellectual Property* 437 <<https://onlinelibrary.wiley.com/doi/10.1111/jwip.12111>> accessed 27 January 2024.

protection in TRIPS. On the other hand, the EU vigorously advocated for GIs protection under TRIPS, particularly for wine, and protected agricultural foodstuffs under the *sui generis* GIs protection.²⁴

Among eight South Asian Association for Regional Cooperation Countries, Bangladesh,²⁵ India,²⁶ and Pakistan²⁷ have the *Sui Generis* GIs laws. In contrast, other countries (Afghanistan, Bhutan, Maldives, and Nepal) protect their GIs through trademark laws that are collective marks or certification marks.²⁸ Sri Lanka amended its Intellectual Property Act in 2022 to introduce a separate registration system for GIs in The Intellectual Property (Amendment) Act 2022, No. 8²⁹

Through doctrinal research, this article has discussed Nepal's position on protecting GIs.-. Also, the paper has suggested the best method, *Utpati Mool*³⁰ or *Maulik Kanoon* (*sui generis* law) to protect the GIs in Nepal.

2. EU AND US DEBATE

There are two types of debates on applying GIs laws in the EU and US: the application of *Sui Generis* and trademark laws to protect GIs. The EU does not consider Article 22³¹ of TRIPS to be sufficient to protect GIs against

²⁴ Philip Matthews, 'Increasing Revenue in Developing Nations through Intellectual Property Rights: Why a Diversified Approach to Intellectual Property Protection with a Focus on Geographical Indications Is the Best Method' (2010) 7 Buffalo Intellectual Property Law Journal 201 <<https://digitalcommons.law.buffalo.edu/buffaloipjournal/vol7/iss2/3/>> accessed 27 January 2024.

²⁵ Geographical Indication (Registration and Protection) Act 2013 (BD).

²⁶ Geographical Indications Goods (Registration and Protection) Act, 1999 (IND).

²⁷ The Geographical Indication (Registration and Protection) Act, 2020 (PAK).

²⁸ Laxmi Sapkota, 'Comparative Study of *Sui Generis* Geographical Indication Laws in South Asian Countries: A Way Forward to Nepal' (2022) 11 Journal of Global Research & Analysis 31 <www.geetalawcollege.in/wp-content/uploads/2023/06/JGRA-DECEMBER-2022.pdf> accessed 8 May 2024.

²⁹ The Intellectual Property (Amendment) Act, No. 8 of 2022 of Sri Lanka.

³⁰ Prof. Dr Yubaraj Sangroula, in the national seminar organised by Kathmandu School of Law on April 26, 2022, used the word *Utpati Mool*.

³¹ Article 22 of TRIPS states geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a member, 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..

imitation, evocation, or misuse of agricultural products and foodstuffs. Therefore, the EU has introduced a TRIPS-plus provision to protect GIs.

The Civil Law and Common Law systems treat GIs differently. Protection in civil law jurisprudence invariably depends on registration rather than use; it offers a plaintiff a remedy of an injunction. Most EU countries, including France and Russia, follow civil law, whereas the USA, India, Canada, Australia, and New Zealand follow common law.³²

The EU and US debate is not limited to their territory. There is also a downside to having a multifaceted system for protecting GIs. A third country must make its laws compatible with those of these two groups for the Free Trade Agreements of these countries with others. For example, there is a Free Trade Agreement between the US and the Republic of Korea (KORUS) and a Free Trade Agreement between the EU and the Republic of Korea (KUREU). Also, the US Free Trade Agreement with South Korea protects GIs through trademark law. The EU Free Trade Agreement with South Korea provides for specific GIs protections, establishes a GIs register for agricultural products, foodstuffs, and wines, specifically designates specific EU and South Korean products to be given GIs protection, and provides additional enforcement measures related to GIs.³³

The EU and the US compete to define GIs through trade agreements with shared nations, risking legal inconsistency with national trading laws. In Nepal, there is a need for GIs laws to resolve conflicts between GIs users and trademarks within the same jurisdiction. The "First in time, first in the right" principle is the primary method to address such conflicts,³⁴ challenging the liberal individualism bias.³⁵ The EU's legal framework is

³² L R Nair, *Geographical Indications: A Search for Identity* (Lexis Nexis India 2005).

³³ Congressional Research Service, 'Transatlantic Trade and Investment Partnership (T-TIP) Negotiations' (CRS Report No. R43387 2016), available at <<https://crsreports.congress.gov/product/pdf/R/R43387>> accessed March 5, 2024.

³⁴ Dev Gangjee, 'Sui Generis or Independent Geographical Indications Protection' in Irene Calboli and Jane C Ginsburg (eds), *The Cambridge Handbook of International and Comparative Trademark Law* (Cambridge University Press 2020) <www.cambridge.org/core/books/abs/cambridge-handbook-of-international-and-comparative-trademark-law/sui-generis-or-independent-geographical-indications-protection/B6C4BD026101D3F3DF38A577292CFC4F> accessed 18 October 2023.

³⁵ *ibid.*

a significant avenue for GIs protection, with schemes like Protected Designation of Origin and Protected Geographical Indication.³⁶

3. EXISTING REGIME ON GIS IN NEPAL

The preamble of the Constitution of Nepal states that Nepal is committed to socialism-based democratic norms and values,³⁷ and Article 4 states that it is a socialism-oriented State.³⁸ However, its implementation is inclined to neoliberalism. The Constitution recognises intellectual property as a property in fundamental rights.³⁹ In case of its breach, the Constitution provides the constitutional remedies.⁴⁰

Similarly, The Muluki Civil Code, 2017 AD has identified intellectual property as a moveable property,⁴¹ and the property obtained as intellectual property is private,⁴² which gives a person monopoly rights to do whatever he/she likes with his/her property.⁴³

There are two intellectual property laws in Nepal: The Copyright Act, 2002 AD, for the protection of the copyright and related rights, and the Patent, Design and Trademark Act (PDTA), 1968 AD, for the protection of the patent design and trademark. The Collective Mark Directives, 2010 AD, states that it obtained validity under the PDTA; however, the Act has not recognised the word collective mark.⁴⁴ Further, the Directive has recognised the PDTA, stating that the procedure relating to registering a collective mark shall be as stated in the PDTA. Also, Nepal issued the Intellectual Policy, 2017 AD, to develop a new legal framework for IP. It

³⁶ UNCTAD, *Why Geographical Indications for Least Developed Countries (LDCs)?* (United Nations 2015) <https://unctad.org/system/files/official-document/aldc2015d4_en.pdf> accessed 3 August 2024.

³⁷ The Constitution of Nepal, preamble

³⁸ The Constitution of Nepal, art 4 (1).

³⁹ The Constitution of Nepal, art. 25 (proviso clause)

⁴⁰ The Constitution of Nepal, art. 46.

⁴¹ The Muluki Civil Code, 2017 (2074), s. 254 (e) (NEP).

⁴² The Muluki Civil Code, 2017 (2074). s.256 (1) (e) (NEP).

⁴³ The Muluki Civil Code, 2017 (2074). s. 256(2) (NEP).

⁴⁴ Laxmi Sapkota, 'Collective Marks Protection in Nepal: Challenges and Opportunities [2023] Nepal Bar Council Law Journal 140.

has incorporated provisions on GIs,⁴⁵ along with copyright, patent, industrial designs, trademark, plant species, trade secrets, integrated circuit, layout design, traditional and Indigenous knowledge, traditional cultural expression and folklore, biodiversity, and genetic resources.

Various scattered laws have recognised GIs apart from the policy in Nepal. To mention a few, 'The Industrial Enterprise Act, 2076 BS' has defined intellectual properties incorporating GIs.⁴⁶ Export and Import (Control) Act, 1957 AD states that if the Government of Nepal considers that it is necessary to prohibit or control the exportation or importation of any goods for the protection of intellectual property rights such as patents, trademarks, copyrights, industrial designs, GIs and undisclosed information; it can do so by notified order and it can prohibit, or apply full or quantitative restriction on, the exportation or importation of such goods, with or without specifying any specific condition or period.⁴⁷

Local Governance Operation Act, 2018 AD has mentioned the right and the responsibility for the administration of intellectual property rights; however, this has not defined the GIs under IP, and the implementation of the law falls under the jurisdiction of the federal government as stated in the schedule to the constitution. However, the protection, promotion and documentation of intellectual property is the responsibility of all three layers of the government. Furthermore, it states that the protection, promotion and recording of local intellectual property falls under the works, duties, and rights of municipalities.⁴⁸ Industrial Business Act, 2019 AD has defined Industrial property, including GIs under its definition. In other sections, various tax-related matters are mentioned.⁴⁹ Although these Acts are not directly related to GIs, intellectual property is provided in the following Acts: the Customs Act, 2006 AD, which laid down the conditions regarding the import and export of intellectual property embodying goods and services. Furthermore, the Competition Promotion

⁴⁵ The National Intellectual Property Policy, 2017 (2073), s.8(2)(e) (NEP).

⁴⁶ The Industrial Enterprise Act, 2020 (2076) (NEP).

⁴⁷ Export and Import (Control) Act, 1957 (2013). s.3 (O) (NEP).

⁴⁸ Chapter 3, section 11(2) (j) of the Local Governance Operation Act, 2018 (2074) (NEP).

⁴⁹ The Industrial Enterprises Act, 2020 (NEP) defines "intellectual property" in Section 2(k) as intellectual property, including patents, designs, trademarks, service marks, geographical indications, and trade secrets. This term includes matters defined as copyrights by the prevailing law.

and Market Protection Act, 2007 AD, incorporates the protection and enforcement of intellectual property against any abuse.

Nepal Trade Integration Strategy (*NTIS*) 2023 AD⁵⁰ has prioritised export potential sectors. It is essential in the context of GIs because it includes GIs-related products in Nepal's various export potential sectors. The categories are agro-based products, forest sectors, craft and manufacturing products, small and cottage industries, and even services, which are also included in the export category. The list consists of cardamom, ginger, tea, medicinal and aromatic plants, lentils, jute, vegetables, fruits, spices, and coffee in the agro-based products, handmade lokta paper, rosin and turpentine, fragrant oil and textiles of long fiber in the forest sector, fabrics, textile, yarn and rope, leather, footwear, pashmina, carpets in the craft and manufacturing products, iron and steel, readymade garments and cement, pasta, jewellery, honey, himalayan spring water, dog chew and felt in the small and cottage industry category (and electricity in the service export category).

Seven collective marks, comprising Sindhuka Dairy Products, Sindhuka Advertising, Sindhuka Grain and Foodstuff, Everest Big Cardamom Spice, and Himalayan Nepalese Carpet and others, have been registered under the Collective Mark Registration Related Directive 2010.⁵¹

Nepal became a party to The Paris Convention for the Protection of Industrial Property 1883 and the World Trade Organization's Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS) on January 22, 2001, and April 23, 2004, respectively.⁵²

Nepal ranks 108th among the 132 economies featured in the Global Innovation Index 2023, which is not a good sign.⁵³ The most crucial point is Nepal is going to graduate from the least developed to developing

⁵⁰ Department of Customs, 'Nepal Foreign Trade Statistics Fiscal Year 2022/23' (Customs.gov.np2023) <<https://customs.gov.np/storage/DoC/2080-81/Statistics/Annual%20Foreign%20Trade%20%20Statistics%20Book%202079-80.pdf>> accessed 24 March 2022.

⁵¹ Laxmi Sapkota, 'Collective Marks Protection in Nepal: Challenges and Opportunities [2023] Nepal Bar Council Law Journal 140.

⁵² *ibid.*

⁵³ WIPO, 'Global Innovation Index 2023' (2023) <www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023/np.pdf> accessed 3 August 2024.

countries in November 2026, AD.⁵⁴ The data infers that Nepal is not very sensitive to IP. Therefore, strong IP laws need to be established, including for GIs.

4. THE REASON THAT NEPAL NEEDS THE GIS

When there is a difference between 'what it is?' and 'what ought to be?', an ideology-driven movement is required. However, rather than the ideology of North-South, Nepal is a sovereign country that needs its unique law or Maulik laws to protect its GIs.

The author is of the view that⁵⁵ Nepal needs its own kind of GIs laws for four reasons: it has an abundance of GIs goods (for example, one of the districts of Nepal has Juju Dhau Yogurt, which is so famous it can be as renowned as Greek Yogurt),⁵⁶ it is committed to international laws and will comply with international GIs laws. Nepal has a policy and other scattered laws dealing with GIs, and finally, one of Nepal's high courts, Patan High Court, has already stated about GIs in two cases. (Tea Board of India v Modern Tea Industries Pvt. Ltd, Nepal,⁵⁷ Scotch Whiskey Association V. Highland Distillery Pvt. Ltd).⁵⁸

Therefore, Nepal should protect GIs through a *sui generis* law, not through collective marks, because the protection of the GIs should benefit the entire community, not specific people, associations, or groups. The Constitution of Nepal has stated that Nepal is a socialist-oriented country, so why are

⁵⁴ United Nations, 'Nepal Graduation Status LDC Portal - International Support Measures for Least Developed Countries' (www.un.org2 August 2023) <www.un.org/ldcportal/content/nepal-graduation-status> accessed 3 August 2024.

⁵⁵ Laxmi Sapkota, 'Necessity of *Sui Generis* Geographical Indication Laws in Nepal' [2022] NJA Journal 125.

⁵⁶ Laxmi Sapkota, 'Significance of Geographical Indications Laws in Nepal: A Comparative Study of Bhaktapur "Juju Dhau" and Greece "Greek Yogurt"' (2022) 11 Kathmandu School of Law review 60 <<https://nepjol.info/index.php/kslr/article/view/64101/48558>> accessed 3 August 2024.

⁵⁷ *Tea Board of India v Modern Tea Industries Pvt. Ltd, Nepal*, case no. 076-DP-1030, Decision no. 169, High Court Patan, Nepal.

⁵⁸ *Scotch Whiskey Association v Highland Distillery Pvt. Ltd*, Case no. 076-DP-0292, Decision no 92, High Court Patan, Nepal.

we focusing on the Collective Mark (CM) rather than the GIs? Nepal should adopt its own GIs laws, not the collective mark laws.⁵⁹

Sui Generis GIs is a separate independent intellectual property granted based on the geographical origin of the goods.⁶⁰ A collective mark is a subset of trademarks based on the goods' commercial origin.⁶¹ It is also said that trademarks and GIs are neither "equal" nor "identical", or interchangeable. However, coexistence is possible through legislation adopting a harmonious approach protecting both.⁶²

The essential features of the GIs are that the entire community owns it, and the term of protection is unlimited. In contrast, a collective mark belongs to a collective body, and the term of protection is limited to a particular number of years. Further, GIs challenge the concept of property in Nepal as the right to property is private. A collective mark does not carry the legacy of traditional knowledge; it is a group's personal property. The ownership of GIs cannot be transferred, whereas the ownership of a collective mark can be transferred.

Nepal has never been a colony of any country. However, there is a neo-colonial mindset among the people of Nepal and many other countries. This neo-colonial mindset is that the laws of the Western nations are the best; citing Western court precedent is good because only Westerner knows wearing Western dress is best.⁶³

⁵⁹ Laxmi Sapkota, 'Necessity of *Sui Generis* Geographical Indication Laws in Nepal' [2022] NJA Journal 125.

⁶⁰ Monique Bagal, Massimo Vittori and Luis Fernando Samper, *Manual for Geographical Indications in Africa* (European Union Intellectual property Office (EUIPO) 2022) <https://internationalipcooperation.eu/sites/default/files/afripi-docs/AfriPI_Manual-for-Geographical-Indications-in-Africa_EN.pdf> accessed 3 August 2024.

⁶¹ Laxmi Sapkota, 'Necessity of *Sui Generis* Geographical Indication Laws in Nepal' [2022] NJA Journal 125.

⁶² Melissa Ann Loucks, 'Trademarks and Geographical Indications: Conflict or Coexistence?' (Master's Thesis, The University of Western Ontario 2012) <<https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2044&context=etd>> accessed 3 August 2024.

⁶³ Y Sangroula, *Decolonization of Constitutionalism* (Lex and Juris Publication Pvt Ltd 2023).

Nepal is ranked 108th in 'The Global Innovation Index 2023', which captures the innovation ecosystem performance of 132 economies and tracks the most recent global innovation trends. Therefore, Nepal must draft laws that will benefit it more.

5. CONCLUSION

A GI is a sign identifying products originating in a particular territory or region; the product has unique qualities because of a place. The TRIPS is open to the methods of protection of the GIs by the member countries. Within the domain of the TRIPS agreement, different countries are protecting their GIs either by *sui generis* laws, trademark laws, or through laws focusing on business practices. The USA protects its GIs through trademark laws, and the EU protects its GIs through *sui generis* GIs laws. The EU protects agricultural goods and foodstuffs under the *sui generis* system, whereas wine and spirits are protected under the advance protection per Article 23 of the TRIPS Agreement. Therefore, protecting GIs by trademarks or a *sui generis* system corresponds to the United States and European Union debate.

Nepal has the Collective Mark Registration Related Directory 2010, which Nepal's Patent Design and Trademark does not recognise. However, the Directory recognises the Act, stating that the provisions of the trademark law shall be applied in the registration of the collective mark. Seven collective marks are registered under the Directory. The continuous registration of the collective marks might show that Nepal is in line with the US provision.

The National Intellectual Property Policy, 2017 AD, recognises GIs as separate intellectual property, and other scattered laws recognise the independent status of GIs, not as a subset of trademarks. This might demonstrate that Nepal is inclined towards the EU. To be or not to be on one side might be the other part of the research; however, the EU protection is just the *sui generis* protection, and the collective mark protection under the US is another type.

In the context of decolonising the prevailing notion of associating with either the US or the EU, Nepal necessitates the drafting of its kind of *Utpati Mool* (*sui generis*) laws to safeguard its GIs. Nepal's Constitution also states that it is a socialist-oriented State. The protection of GIs through the

sui generis laws benefits the entire community; the GIs are protected for an unlimited period, and the ownership is also not transferred, whereas the collective mark benefits a handful of people. The entire community should help, not just a handful of people. Similarly, GIs-capable goods have a story of history that should be preserved. Further, Nepal will graduate from the least developed to the developing nation in 2026 AD; therefore, it is also mandatory to make the laws compatible with international laws.

Nepal should have its own jurisprudence on the protection of GIs. It should protect its GIs through the *Utpati* Mool or Maulik laws, which means making its unique GIs laws.