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Intellectual Property and Gender in Geographical Indications: A Case Study of Chendamangalam Handlooms in Kerala

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Geographical Indications (GI) are signs bestowed on goods that convey an assurance of quality and distinctiveness attributable to their origin in a defined geographical locality, region or country. Under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations. India, as a member of the World Trade Organisation (WTO), through the enactment of the Geographical Indications of Goods (Registration & Protection) Act, 1999, which came into force with effect from 15th September 2003, also recognises the legal right of intellectual property protection in GI.

GI is distinctive from other types of Intellectual property because the property and the conjoined legal right are vested in a local collectivity.This paper argues that considering GI as a property of the 'local' people provides a different domain of ownership in IP, which needs to be scrutinised. An enquiry into the legal expediency of using geographical indications to protect the local should start by subjecting categories like place and community to a sociological analysis to examine the gendered lapses in their conceptualisation. The Chendamangalam handlooms, located in Kerala, which enjoy GI protection, are taken as a case study to apply a feminist methodology of legal enquiry to understand the potentials and loopholes in how Geographical Indication is conceptualised as a legal right.

Keywords: Geographical Indications, Local Development, Gender, Intellectual Property Rights, Chendamangalam Handlooms

Geographical Indications (GIs) have emerged as a unique and vital intellectual property right with wide-ranging positive implications for localised producers of artisanal crafts and handlooms.[1] Geographical Indications (GI) are signs bestowed on goods that convey an assurance of quality and distinctiveness attributable to their origin in a defined geographical locality, region or country. Under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations. India, as a member of the World Trade Organisation (WTO), through the enactment of the Geographical Indications of Goods (Registration & Protection) Act, 1999, which came into force with effect from 15th September 2003, also recognises the legal right of intellectual property protection in GI.

With its emphasis on collective ownership and its focus on the link between the product and the place of origin, it has been argued that GIs can be an expedient legal protection for ensuring protection of 'local' traditions and knowledge that form an integral part of artisanal communities and their creative production emerging from a specific geographic location.[2,3] However, categories like tradition, place, and community underpin our understanding of 'local', which is not static and continually evolving.[4] It needs to be explored if a legal protection of intellectual property like GI is equipped to deal with the social and cultural flux that informs the contextual evolution of these categories. In this paper, we undertake a gender analysis of the handloom sector in Chendamangalam in Kerala to understand the potential and loopholes in how Geographical Indication is conceptualised as a legal right.

Gender Blind Spots in the Conceptualisation and Implementation of Geographical Indications (GIs) for Local Development

Scholars have scrutinised whether a carefully structured legal protection of GI could facilitate the

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socio-economic development of the local communities that produce the products, and if it can be extended to the protection of local traditional knowledge associated with such production. As mentioned earlier, GI has been acclaimed as a special IP product in trade for the exclusive and unique character of a product for the origin of place.[5,6]Protecting collective ownership in GI means taking advantage of the producers who contributed herewith and preserving the diversity and development of any geographical place[7]. The potential socio-economic benefits GIs could accrue to developing countries have led many to believe that GI is the 'sleeping beauty of IPR '. Communications and Public Outreach Division Related Links 2007 Symposium: Speakers' presentations by. In developing countries, GI grapples with the rural socio-economic structure of communities in their participation within the global market and frequently represents the dynamic governancesurrounding an origin-based product[8].It has also been suggested that geographical indications may particularly interestseveral developing countries in sustainable development and economic growth.[9] N. Gopalakrishnan *et al.* in their influential article titled 'Exploring the relationship between GIs and TK', through an analysis of different legal systems relating to GI within various Asian countries, have argued that in most countries instead of the local community producers, the traders' interests gets a preference as they are more organised and hence influential. They argue that the existence of legal mechanisms in these countries, which is mostly a result of their international obligations to harmonise or adopt legal provisions (adaptation of TRIPS), does not automatically translate to the creation of a conducive 'cultural mindset at the community level'.[10] We argue that this is because the way 'local community' has been thought of within the GI framework of IP protection tends to freeze it as an unchanging a priori category. In this paper, we examine the gendered blind spots that the legal framework suffers from in considering the category of the geographically constituted local community in bestowing intellectual property protection to their production.

Our understanding of gender in this context is informed by the concept of intersectionality, which was put forward in black feminism by Kimberle Crenshaw, a legal scholar. Crenshaw begins her now famous article by citing the title of the first volume on Black Women's Studies, "All the Women are White, All the Blacks are Men, but some of us are Brave'.[11] This was her way of exposing the feminist movement to the fact that most of what was being addressed in the women's movement until then were primarily issues about white women. Similarly, the main subject being addressed within the Afro-American/Black movement was primarily the 'black man'. Crenshaw deftly deployed a metaphor of the traffic signal, illustrating how our identities are formulated at the intersection of various structures of dominance and oppression, like Age, Disability, Community, Race, etc. Addressing specifically how black women's experience becomes invisibilised or gets robbed of its complexities by simplistic explanatory terms like 'double or treble oppression', which sees their oppression being only quantitatively different, Crenshaw argues for the adaptation of an intersectional framework of analysis which is not merely additive in nature, but brings to light the qualitative difference in the oppression. An important consequence of adopting the intersectional analysis is that it addresses the interlocking structures of oppression that inform the formation of identities, also, more importantly, makes it an ethical duty of researchers to make visible and embodied those subjectivities that disappear in the intersections of overlapping structures. In this paper, we aim to bring to light those experiences that are invisible when we look at the identity of local place-based labour in Chendamangalam's handloom weaving, which has a GI registration in India.

Fabio Parasecoli, in his article "The Gender of Geographical Indications: Women, Place and Marketing of Identities", has opined that the relationship between gender, place and local traditions in the case of GIs is not only a symbol of cultural heritage, but is valuable as an economic and commercial asset as well.[12] Applying textual and discourse analysis to written documents ranging from administrative regulations and policy declarations (mainly in theEuropean context of revival of culinary traditions) to international legislations, Parasecoli shows us how the legal and political discourse around GIs often excludes the category of gender, together with other categories like age and class. In this context of looking anew at the politics of place-based intellectual property and the socio-political implications of it on the community, the concept of 'social imaginary' put forth by Rosemary Coombe,

along with Sarah Ives and Daniel Huizenga, is valuable for this paper. Their work argues that the discourse of GI systems is primarily based on a "social imaginary" of place-based products which "projects a harmonious community represented as holistically possessing singular traditions and are located in a particular place characterised by a naturally bounded and distinctive ecosystem".[13] One of the reasons behind this conceptualisation is the neoliberal logic that gives more importance to the trade aspect and concentrates only on integrating the products (and the producers) of crafts and handlooms into the broader global market as a panacea for all their issues. In such an erroneous approach of 'social imaginary', not only is the community imagined as monolithic and unified, but the benefits accruing out of local production are also assumed to be uniform.[14] An analysis of stakeholders in the supply chains within local place-based regional production and the unequal shares that different stakeholders receive asserts that this assumption is wrong. This is brought forth in relief by BoatemaBoateng's careful analysis of textile production and intellectual production in Ghana, where we can trace an astute application of the framework of intersectionality. Boateng shows in her work, where she examines Adinkara and Kente cloth production in Ghana, how intellectual property law converges with histories of subjugation along lines of nation, gender and race to produce and regulate both subjects and knowledge.[15] She prods us to not only look at gender and its working within the relations between men and women in production, but also to examine how these producers are situated within various other institutional structures, including law and the State.[16]

Further, IP researchers have pointed out that GI can be used as a powerful marketing tool against power looms and that commercial imitations pass off as original craft. It has to be noted that marketing techniques can "misrepresent social realities, naturalising hierarchical labor relations and influencing the way stakeholders come to understand their relationship to the products"[17] Moreover the marketing strategies used differ according to the type of community consolidation, as SoumyaVinayan has revealed in her work on the implementation of GI Act in the handloom sector of India. Throwing light on the complex vertical linkages and simultaneous labour relations that work in the handloom sector, Soumya Vinayan in her study finds that master weavers tend to be more flexible about 'sales over counter' allowing credit facilities to customers; something which is prohibited in the case of cooperative societies as per the government regulations. She also maps out the disconnect between the individual weaver and the market, with the actual local producer having no input in how the product will be marketed or for whom it is produced.

For geographical indications to be compelling, all stakeholders must be involved through some democratic means of participatory process, which tackles the alienation of the producer from the product. As Amit Basole asserts in his brilliant case study of the Banarasi Sari, one should also be alert to the dynamic nature of artisanal knowledge and the political economy involved in the production. He observes that the GI system, which is not developed with the participation of the artisanal community, tends to be preservationist, freezing the process of innovation in the name of craft preservation.[3] We seek to extend this argument and also note that for the GI system to be effective, not only notions of authenticity of the craft have to be open to flexibility of the community, but the process involved in the artisanal community's making and remaking of identities have to be also examined about relations of labour through the intersectional framework.[18]

Chendamangalam Handlooms: Transforming Identities of Place and Labour

Chendamangalam, geographically situated in the Paravur Taluk of Ernakulam district in Kerala, has its cultural identity linked to its historically famous handloom crafts. However, this identity of Chendamangalam as a place identified primarily through the labour of its weaving community is historically determined. The weaving community, linked to the geographical place, has continuously evolved along caste and gender, and hence is not a static category. We argue in this section that while the legal protection of geographical indication presupposes a principle of uniqueness that links the local 'place' to the 'product', it is necessary to look at the transforming identity of the 'place' for the protection to be effectively implemented. In Chendamangalam's case, we argue that the identity of place is determined through the community of weavers, which, after the post-flood period, is closely identified with its women weavers.

The pre-independence history of Chendamangalam handlooms is closely associated with the feudal family of Paliam, seated in Chendamangalam, who

were the wealthiest subjects of Cochin, richer even than the royal family of Cochin. The eldest male members were bestowed with hereditary premiership of Cochin, which they maintained except for brief interludes in between. During that period, they maintained wealth and exalted societal positions[22]. Successive PaliyathAchans, the head of the family, patronised the handloom weavers of Chendamangalam. In the early days of its origin at Chendamangalam, the weaving of handloom cloths was mainly done for the members of the Paliam family, where the PuliyilokkaraNeriyathu, Kasavu Mundu, and Kasavu Sarees were recognised as distinctive hallmarks of dignity for the family members. As the 1930s set in, a large handloom weaving industrial unit was established at Kottoyil Kovilakom as a private limited company by an entrepreneur, Mr. K.V. Krishnankutty Menon. This industrial unit was responsible for popularising the Chendamangalam handloom clothes in southern India. However, this industrial unit shut down its operation in 1948 for various reasons. In 1948, another private limited manufacturing unit called The Pioneer Company started the production of handloom clothes at the heart of the Chendamalgalam village. Besides organising the handloom weavers under its banner, the Pioneer Company used to supply the necessary cotton yarn to handloom weavers at reduced rates, and make them weave the cloth in their homes. The company procured the finished products and sold them in bulk with their trademark. In the year 1950, the company wound up its operations. The co-operative movement initiated in the country as part of the National Movement for freedom of the nation has its waves in the erstwhile Cochin region of the present Kerala. This movement organised the handloom weavers into the co-operative fold. As a result, several handloom cooperative societies were formed in this region immediately after independence. All the weavers in the cluster have been organised under the co-operative fold.

Along with the changes in the organisation of the labour, the weaving community has undergone transformations of its own. The original weavers in Chendamangalam belonged to the particular caste of Chaliyars, a caste community that traced its origin outside of Kerala. However, it is ironic that in the present-day Chendamangalam cooperative societies, one will hardly find a weaver belonging to that caste. Instead, the reputation of Chendamangalam handloom products acquired by the weaving community of Chaliyars is now enjoyed by many people, especially those belonging to economically and educationally backwards sections. This transformation is also linked to the history of the reformation in Kerala. The history of textiles and clothes in Kerala is fraught with struggles of a gendered nature, where historically oppressed castes had different access and meanings attached to clothing and attire. J. Devika, noted feminist historian from Kerala, has conceptualised the category of ‘sthreevashi’ to delineate the long history of feminist protest in Kerala; the word in itself is taken from the Channar Lahala, or the Maaru marakkal Samaram. Channar Lahala was between 1813 and 1859, when the Nadar women protested and fought for their right to cover their breasts with the uppercloth, which only Nair women were allowed to wear till then.

In Chendamangalam, in response to calls for caste reformation, there was an influx of Eezhava labour into the weaving community. Ajayakumar, the Secretary of Co-operative No. 91, who has been chronicling weaver narratives, informed us of how Sree Narayana Guru’s call to reform caste and the idea of dignified labour gave way to this change. Weaving was seen as respectable labour for the Eezhava community in Chendamangalam as well, which had seen the Paliam Satyagraha that saw a public assertion and demand to the PaliathAchans to throw open roads for public use. During our fieldwork with women workers in the cooperative societies, we realised that the labour, especially of women, though predominantly coming from the Eezhava caste, is not only not homogeneous, but it is also continuously evolving. For example, Saraswathy Amma, one of the oldest women workers in Chendamangalam, had started weaving at 16, when her father set up weaving looms at her home for her and her sisters. She says her family was not involved in weaving labour before that, but now she has spent a lifetime weaving, and one of her daughters has also joined the cooperative. Most women we interviewed had either taken up weaving at home from a young age or had taken it up after marriage because of looms in their marital place. So, unlike the men who hailed from the area, the women weavers came into Chendamangalam and worked on the labour of weaving at different times. Theyalso left the labour force according to the exigencies of marriage. This brings us to the geographical link to the product presumed within the

GI tag. How does this link manifest when one brings community, tradition, and transference of knowledge linked to the local place?

Chendamangalam came back into discussion within Kerala's public sphere during the 2018 floods that caused havoc throughout the state. The Chendamangalam handloom textiles were already facing trouble, especially from the competition from power loom fabrics and, more importantly, the unavailability of skilled labour. When floods submerged Chendamangalam, more than hundred looms with the unique reputation of having facilities for weaving finer count cotton combed yarn (of 120s, 100s and 80s), a rarity across most clusters in India, were all fully damaged and what remained from the flood were the loom frames, putting the future of 350 weavers and allied workers at stake.[23]Stock worth Rs 75 lakhs to 1 crore was estimated to be drenched in the flood, including finished products like dothis, sarees, two-piece sets of mundumneriyathum, of the finest quality that you could find in Kerala[24]. However, this period of adversity led to concerted efforts from the handloom sector, with many well-wishers, including designers, rallying for the cause of Chendamangalam. A renewed energy was infused into rethinking how the looms could be revived. From collaborations with designers like Shalini James of Mantra, Sreejith Jeevan of Rouka and Poornima Indrajith of Praanah, there was an attempt to infuse a new design aesthetic that worked on the authentic handlooms of Chendamangalam. Innovative ideas were set into motion to upcycle the handloom products destroyed in the floods. In an initiative by social entrepreneurs Lakshmi Menon and Gopinath Parayil, dolls were made from the soiled garments of Chendamangalam handlooms and all the proceeds from the sale of these dolls were handed over to the Chendamangalam Handloom Weavers' Co-operative Societies. The dolls termed ChendamangalamKutty or Chekutty dolls quickly became a symbol of the resilience of Kerala in the face of devastating floods, and the initiative was carried out as a voluntary initiative with volunteers helping in setting up and managing the website as well as in the actual making of the dolls.

The floods also led to another representation of the Chendamangalam handlooms, which focused on the women workers in the handlooms. Almost all narratives in the Kerala public sphere, which tried to evoke support for the ailing handlooms devastated by floods, focused on the overwhelming majority of women labour involved. We argue that in the aftermath of the floods, the identity of the Chendamangalam handloom was constructed around the figure of the 'woman weaver'. For example, the Save the Loom project, a non-profit community group that was formed to revive and restructure the handloom sector in India, in a specific mission titled Mission Chendamangalam, highlights how 90% of the workforce consists of women, and most of them are above 50. In their efforts to collect testimonies of the weaving community of Chendamangalam, we see how an identity of the weaver is formed around gender, with narratives of men included only as a part of the family. In our field work, we also saw this narrative being repeated by the presidents of the respective cooperative societies. The women workers also identified themselves as the primary weavers in their articulations. A year after the floods, we noticed how this gendered narrative was firmly entrenched in the success of the revival of the handloom societies. The Minister for Health and Social Justice, K.K. Shailaja, in her visits to Chendamangalam to assess the post-flood situation in 2019, asserted how the women weavers were integral to the handlooms and expressed her willingness to grant help to devise women-specific plans. The post-flood interest and renewal of the cooperative societies, most of whom have recovered the pre-flood debts, owes to the construction of Chendamangalam handloom not only as a geographically unique product, but also as an industry primarily driven by women. However, the question remains if the women weavers accrued the benefits of such a construction.

Our field study was conducted through unstructured interviews with 35 participants; 29 were female weavers (Table 1). The empirical part of the work was conducted at various cooperative societies in Chendamangalam, covering three of the five existing large cooperative societies. The following

Table 1 — Demography of the Weavers in Chendamangalam Cooperative Society

Gender	Participation in the sample	Education	Participation in the sample	Age	
Male	6	Above 10th	7	Above 50	30
Female	33	Below 10th	32	Below 50	9
Total	39		39		39

table shows the demographics of the sample we have studied. Demographic variables like age, sex, education, and income level were included in the questionnaire to find the sequence of the problem of the local producers. The items were generated with the help of experts from the Agricultural University, who were involved in registering for GI certification, the Textile Committee of India, and the Spices Board of Kerala.

During the field work, it was evident that women weavers, while contributing to more than 75% of the production, had far less political representation in the power structure of the cooperative societies. It was also evident in our interactions with the women weavers and the office bearers of the cooperative societies that the women members who are usually given the post of vice-president remain only a token representative. MGNREGAalso had depraved effects on Chendamnagalam GI since the weavers were getting higher wages from that scheme than from weaving. Shift from weaving to MGNREGA was evident in the Chendamangalam GI, and it also questioned the viability of this labour for women. The misalignment of the Chendamangalam GI price at the customer end and the wages they are getting is also an interesting empirical result of this study (Table 2). [19]

In one cooperative society, the president chose the woman memberto aid him in the power tussle he was having with the Secretary of the society. A lack of actual power for women weavers was evident in their working conditions and their differential wages compared to men. Technically, both men and women were being paid equal wages, but once we look closely, the jacquard work, which is the work on the borders using golden thread, is done by men. This jacquard work fetches more wages than weaving using cotton, as the jacquard work in itself, even when detached from the main garment, fetches a price of its own. While the jacquard work requires skill, the work undertaken by women is also not devoid of skill and is physically more strenuous. It is not surprising that in our survey, all women, regardless of their age difference, complained of work-related health issues like back pain and pain in the knees from handling the heavy equipment. This is compounded by the fact that since one is paid daily according to the amount of yarn or material produced, the women take efforts despite health concerns to push themselves to produce more quickly. Also, as noted earlier, the weaver community is prone to change in Chendamangalam handlooms, and the knowledge is imparted not through traditional means but through workshops and classes in the societies. Hence, it would not be difficult for women to acquire the required skill to do jacquard work, which could increase their wages and reduce their reliance on more physical labour. A revamping of the political hierarchy where there are avenues for women to consolidate their power and articulate their needs before it is placed before the cooperative society meetings would be beneficial. This, of course, would need mechanisms that would allow them not to worry about losing their daily wages while time is spent on political consolidation. While the entry of independent designers has increased flexibility for women in decisions related to sales and an increased stake in profits, one has to be careful about this model, as it can lead to abuse if the designers in question are not socially committed. So, a long-term solution can only be sought by increasing women's political power within cooperative societies. Hence, it is evident that for GIs to be a viable legal protection, a gendered analysis of the local labour community linked to the geographical area is critical.

Table 2 — Price Comparison of Chendamangalam Cooperatijve Society and Textile Market

Item	Price to society	Price at market
Dhoti	350	800
Border Dhoti	800**	1700**
Sari	450	900
Kerala sari	2100***	4500***
Jacquard sari	1500*	3000*

Source: Own preparation based on survey
**same border width*
***same colour and border*
****Lowest one in Sari collection of Chendamanaglam, same in the market*
Note: This table is prepared based on the price displayed in branded shops in Cochin

Conclusion

Geographical Indications indeed have the potential to protect local community interests as well as consumer interest by giving importance to the unique link of the product to the geographical place of origin that imbues the product with a particular reputation or quality or characteristic that makes it special.[20] Studies on Geographical Indications and their impacts on the producers of handloom industries usually concentrate on the flaws in the marketing; however, in this article, we have used the concept of intersectionality from feminist methodology to examine how the construction of the geographical

place is complicated through changing identities of labour. [21] For it to reach its legal potential to help the real stakeholders in producing the handloom product, the weavers, who are the real stakeholders, have to stop considering the categories of place and community as preexisting. The analysis of women weavers shows how considering their experience upsets the 'social imaginary' of the local place and the local weaving community, which were taken for granted as being homogenous and monolithic. This study is conceptualised as only a starting point from where the potential of GI in helping the weavers of Chendamangalam can begin. A further analysis of marketing possibilities within the Cooperative societies should consider how the local weaving community has evolved over time and also give attention to the differential experiences of labour based on gender.

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