

## Lecture 25: Geographical Indications and Trade-secret

Dear students, today we are going to discuss about two intellectual property rights. One is Geographical Indications, and the other is Trade secrets.

### CONCEPTS COVERED

- **Paris Convention Provisions**
- **GI Protection in Various Jurisdictions**
- **Indian law on GI**
- **Basic Commitments on Trade Secrets**
- **Indian Scenario**

So, what is a Geographical Indication? The Geographical Indication is a community right, it is known as a community right, not owned by an individual. The entire intellectual property rights section talks about private rights, and this is the one intellectual property category that refers to community rights, that an individual cannot own. So, it is rooted in the Paris Convention, and then GI protection was through various jurisdictions with different names. Ultimately, when it comes to the TRIPS Agreement, the common name is Geographical Indications Protection. India also passed a law in accordance with the TRIPS obligations. Then next, we will see the Trade-secret - undisclosed information, and even though there is no law in India, we will see the Indian scenario in this particular class.



So, I was asking What a Geographical Indication is. This picture shows the first Geographical Indication of India, which is the Darjeeling tea. So, there are two terminologies: one is Darjeeling, and the other one is tea. So, what is the intellectual property in it? So, if a particular product has a reputation and uniqueness because of a region or a particular place, then it is considered as a community intellectual property law that is the Geographical Indication. An Indication of a goods which is directly related to, not services, goods related to a particular region or a place or country, then it is known as a geographical indication. It originates from a particular Geographical area which has a special reputation, then it can be considered as a Geographical Indication. Darjeeling tea is the first Geographical Indication and is very world-famous as well.

## Geographical Indications (GI)

- **A name or indication associated with a place is sometimes used to identify a product.**
- **This “geographical indication” does not only say where the product comes from.**
- **More importantly, it identifies the product’s special characteristics, which are the result of the product’s origins.**



So, the name or the Indication must be associated with a particular place to identify that product. India presently has more than 450 geographical indications registered in different parts of India. These particular products are associated with a particular Geographical area of India, and also, these particular products are identified in the name of that particular place with a special characteristic and with a special reputation. Only then can it be considered a geographical indication.

## **S. 3, GIs, A. 22**

- **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.**
- **A.23 – additional protocol for wines and spirits.**
- **India – 10 years.**



So, here it very clearly says section 3 of the Indian GI Act as well as Article 22 of the TRIPS Agreement. Here, it says that Indication, which identifies a good as originating in the territory of a member or region or a particular locality in that territory with a given quality, reputation or other characteristic of a good, is essentially attributable to its Geographical origin. It may be the skill of the people, it may be a special characteristic of the raw materials which are used from a particular region, or it may be even climatic conditions which made that product very special. So, it can be the aroma; it can be the qualities, it can be the chemical composition, it can be the skill of the people who are making that particular product from that particular area. And in India Geographical Indication is protected for ten years, which is provided is here.

## Special Protection

- **Article 24** contains a number of exceptions to the protection of geographical indications.
- These exceptions are of particular relevance in respect of the additional protection for geographical indications for wines and spirits.
- For example, Members are not obliged to bring a geographical indication under protection, where it has become a generic term for describing the product in question (paragraph 6).



A special protection is given: contained under Article 24, and you can also see that there is special protection with regard to wines and spirits. So, the special protection is included in the TRIPS Agreement mainly because of the pressure from the European countries those who produce lot of wines and spirits. So, it means that every member country has to provide special protection to wines and spirits as well in their territories.

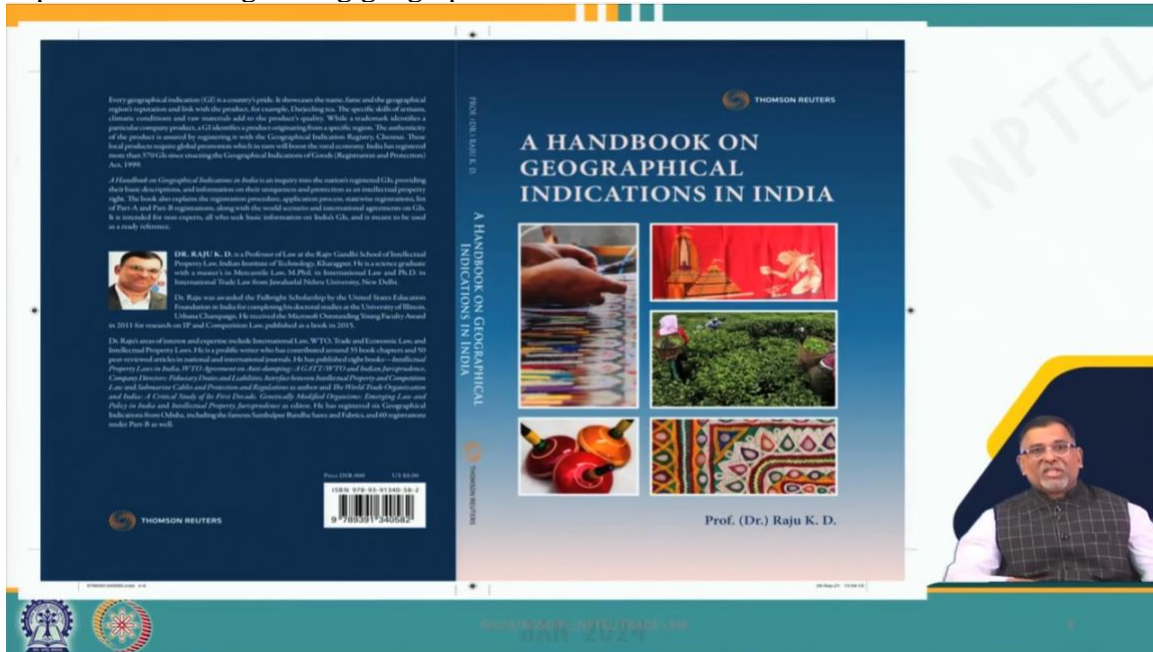
## Registrations

1. **Dhalapathar Parda & Fabrics (Application No.207)**
2. **Sambalpuri Bandha Saree & Fabrics (Application No.208)**
3. **Bomkai Saree & Fabrics (Application No.217)**
4. **Habaspuri Saree & Fabrics (Application No.219)**
5. **Berhampur Patta (Phoda Kumbha) Saree & Joda (Application No.220)**
6. **Ganjam Kewda Rooh (Agricultural)**
7. **Ganjam Kewda Rooh**
8. **30 Part – B Registration of Sambalpuri Bandha Saree & Fabrics**
9. **30 Part – B Registration of Bomkai Saree & Fabrics**



We have registered a number of products with around 7 Geographical Indications from the state of Odisha. So, I have registered products which includes the famous *Sambalpuri Bandha Saree and Fabrics* and other is *Dhalapathar Parda and Fabrics*, *Bomkai Saree and Fabrics*, *Habaspuri Saree and Fabrics* and *Berhampur Patta (Phoda Kumbha) Saree and Joda*, *Ganjam Kewda Rooh* and *Ganjam Kewda Flower* and also part B registrations

are also done for the *Sambalpuri Bandha Saree* and *Bomkai Saree*. So, this is our experience with registering geographic Indications.



In 2022, I published this book, “A Handbook on Geographical Indications in India”. So, the students can refer to this book for this particular module to learn more about the Geographical Indications Law from India.

- **Court of Appeal of Paris, in a litigation involving the famous Darjeeling Tea, as protected as a certification mark, and the following MONGOJI device mark.**



So, why should you protect? Why should you protect Geographical Indications? And you saw the two logos. The first logo is the Darjeeling logo, which is again a registered geographic Indications from India. Around 10 tons of tea are produced only from the Darjeeling area, and these 10 tons of tea are completely managed by *the Tea Board of India*. *The Tea Board* is the registered proprietor of Darjeeling tea. They produce only 10 tons, but all over the world, around 16 tons; some of the studies revealed that 16 tons of

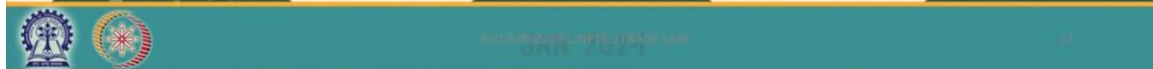
tea are distributed all over the world as Darjeeling tea. So, where are the other 6 tons coming from? It comes from various parts of the world, and they term it, label it as Darjeeling tea, or deceptively sell it as Darjeeling tea. So, in this picture you can see that *The Tea Board* has fought a case in Paris, France against a certification mark which is known as *Mongoji* device mark. You see the difference; the only difference is that the lady becomes a Chinese lady, and the tea tick becomes a flower, and the shape of the lady and attire have changed, that is all. But otherwise, it is a clearly deceptive mark, and the tea board fought this particular case, and they won the case. So, it is very simple: if you do not protect your intellectual property, somebody will take it away. They will protect it as an intellectual property and they will file a case against you for violation of their intellectual property if you market it. So, this case was successfully defended by *The Tea Board* in the court of appeal of Paris.



We have also had successful cases of geographical indications. Aracu coffee, Aracu coffee in this particular area, on the border between Odisha and Andhra Pradesh. So, in this particular area, very poor farmers, especially those belonging to tribal families, cultivate this particular coffee. This coffee has a very successful story as a Geographical Indication, and earlier, it was registered as a Geographical Indication. In the farms, you can see the red coffee beans are completely scattered, and the agricultural inputs have no coordination, and there are no farm practices and uniform farm practices. So, everybody adopted different practices, and the farm product quality was not uniform. So, in that particular time, there was a private organisation in Mumbai, Nandi Foundation and with the help of experts, foreign experts even, they took over this particular case and they registered the Aracu coffee as a geographic Indication, and all the farmers were trained, and they formed a cooperative to process the entire Aracu coffee in a single unit and all the tribal farmers were trained on-farm practices. So, without fertilizers and without pesticides. So, it became the story. The success of the story is that it became the number one coffee in the world and now it is exporting to other parts of the world, and the farmers are getting benefits from it.

## What is GI {S.2(e)}

- “geographical indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country,
- or a region or locality in that territory,
- where a given quality,
- reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case
- where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory,
- region or locality, as the case may be.



And we can see what exactly a GI is. The Indian GI Act, which defines Geographical Indications in relation to goods, means an Indication which identifies such goods as agricultural goods, natural goods, and manufactured goods as originating or manufactured in the territory of the country. So, it talks about three categories: agricultural goods, second is natural goods, and third is manufactured goods, originating in a particular territory or a region or locality in that territory and most importantly the prerequisites: with a given **quality, reputation, characteristics** and essentially this is attributable, this reputation and quality are attributable to that Geographical origin. So, then only it can be considered as a Geographical Indication, it must be related to or connected with that Geographical origin.

## What is GI?

- It is an indication or appellation of origin.
- It is used to identify agricultural natural or manufactured goods. Originating in the said area.
- It originates from a definite territory in India.
- It should have a special quality or characteristics or reputation based upon the climatic or production characteristics unique to the geographical location.



So, in some countries like Europe, it is known as an *appellation of origin*, it is again, you can see the name is different, but it is ultimately the same, now the TRIPS Agreement, clearly says that it is Geographical Indications. Identified territory, special quality, characteristics, uniqueness, it may be due to the climatic conditions or the production process, unique production and process characteristics, which should be taken into consideration for the GI registration.

## Who can Apply?

- **Any association of person, producers, organization or authority established by or under the law can apply.**
- **The applicant must represent the interests of the producers.**
- **The application should be in writing in the prescribed Form.**
- **The application should be addressed to the Registrar of Geographical Indication along with prescribed fee.**



Most importantly, as I said, geographical indication is considered to be a community right. Even though it is an intellectual property law, all intellectual properties are private rights. Here, it is a community right, and the reason is that no individual can apply for a Geographical Indication registration. Only a community of people, an association of people, an association of producers, other organisations and even governmental authority only, can apply for registration. So, the only condition prescribed is that they represent the interest of the producers. So, there is a prescribed application form, and the Indian registry is in Chennai. Now, you can apply online as well by paying the prescribed fee after the examination and other things, and they will issue the registration certificate.



## Who is a Producer?

- **A Producer is a person dealing with three categories of goods.**
- **Agricultural Goods including the production, processing, trading or dealing.**
- **Natural Goods including exploiting, trading or dealing.**
- **Handicrafts or Industrial Goods including making, manufacturing, trading or dealing.**



So, who is a producer? So, there are three categories of goods: agricultural goods, natural goods, and industrial goods. So, any person dealing with these goods, any person dealing with these handicrafts, any person dealing with the industrial goods, any person dealing or trading the particular product can also be a producer. So, the trader can also be considered as a producer.

## Sectors

- **According to Section 2(f) of the legislation, goods which are afforded protection are falling under 5 sectors. They are;**
  - A. Agricultural Goods**
  - B. Natural Goods**
  - C. Manufactured Goods**
  - D. Goods of Handicraft or of Industry**
  - E. Food stuffs**



So, as I told you, here, you can see clearly that the protection is for five sectors in the Indian Act: Agricultural goods, Natural goods, Manufactured goods, Handicrafts, and Foodstuffs. So, Indian law talks about five categories. TRIPS Agreement talks about three categories: the first three agriculture, natural and manufactured goods. Most importantly, in India, the largest number of registrations are on handicrafts, followed by agricultural goods. So, natural goods and manufactured goods are very few.

## GI Registration

- World – 60000
- OECD – 10000
- China – 2,385 geographical indication products and 5,324 registered trademarks. -7709
- India – 450

And if you look into the registrations, we can see a huge number of registrations, around maybe 60000 to 1 lakh registrations all over the world, and OECD is the largest contributor with 10,000 registrations. China: China is reaching the total registered trademarks of 10,000, and India, I would say that it is one of the largest countries, with the largest resources has hardly registered. It is going to be 500, hardly going to 500. So, there was a very recent discussion in the GI registry to increase this number to the maximum, like in other countries. So, even though we are in the 25th or 27th year since the establishment of the WTO, we are only able to register maximum to the tune of 500 applications, processing 500 registrations, with the largest country, with the largest resources and 'n' number of Geographical Indications. So, if you want to cash it out, the economic benefit then definitely you have to register these particular products.

## Goods

- **The Geographical Indications of Goods (Registration and Protection Act) 1999.**
- **2(f) - Good means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;**
- **2(g) – Indication includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of foods to which it applies.**

So, the Indian Act even defines what are the goods included.

## Why the GI needs Protection?

- **Consumer's Point:-**
- **GI's are denoting quality and origin of the products.**
- **If not protected properly many of the GI's which have acquired reputation and good will could be misrepresented by unscrupulous commercial operators.**

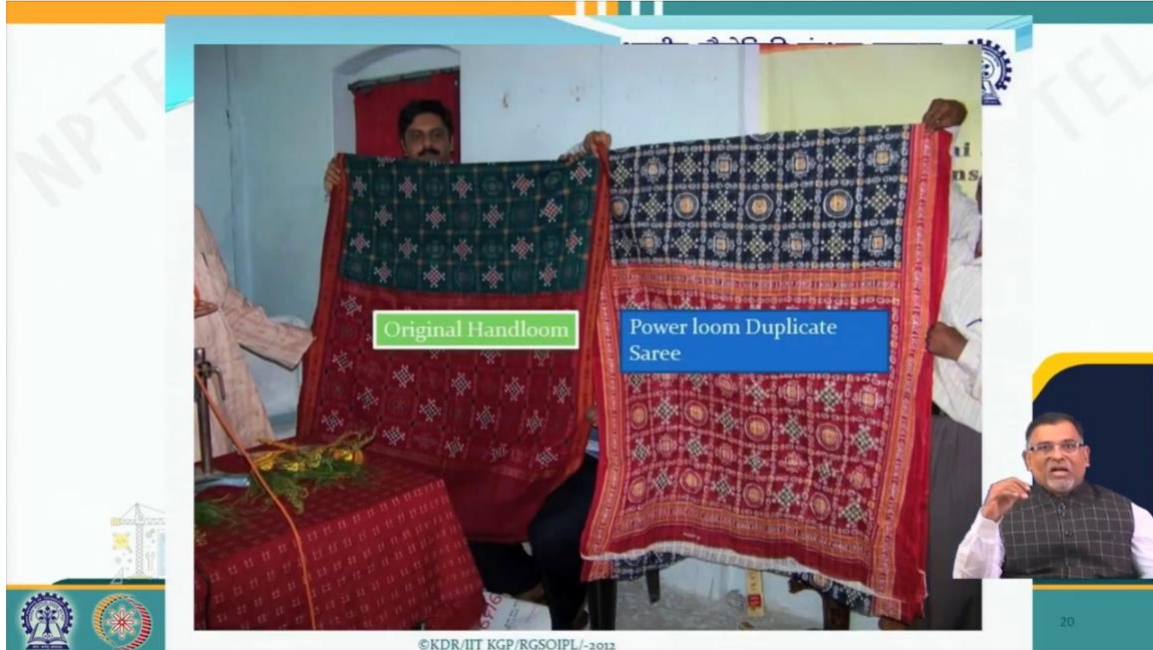


And why the GI needs protection? Why you should protect, it is very simple. We saw the *mongoji* and the *dargering* tea case. It is from the consumer point of view, the consumer must get a quality product that originally belonged to that particular region; otherwise, the Darjeeling Tea can be made in Kolkata or Neelgiri or in other parts of hilly areas of India, and it can be sold as Darjeeling tea, but the GI Act prohibits that. So, mainly, the consumer should be protected from misrepresentation and commercial exploitation. Commercial exploitation is prohibited, which means you cannot duplicate the products.



So, here we can see another example. So, I got these two Saree(s) from Odisha and one is a handloom and other one is made from power loom. And, an ordinary, uneducated, even educated person cannot identify which one is handloom and which one is power loom.

So, the power looms duplicates and sells it as Sambalpuri Saree, one of the varieties of Sambalpuri Saree or Habaspuri Saree, specifically. So, as an ordinary consumer, you cannot distinguish.



And you can see which is the original one and which is the duplicate of these two Sarees and we find it from the market. So, in order to stop, in order to prohibit this kind of duplication or exploitation, infringement by commercial exploiters, you require Geographical Indication registration. So, now the Sambalpuri Saree is registered as a Geographical Indication, and the proprietor is the *Department of Handloom*. They can take action against people, who duplicate commercially using power looms. When they duplicate, they can take action, they can take civil action as well as criminal action under the Geographic Indications Act.

## Benefit of Registration

- **Authorized user gets the exclusive right to use .**
- **The Registered Proprietor and Authorized user gets the right to seek relief with respect to infringement.**



So, the benefit, ultimately, goes to the producers. The benefit, basically, goes to the customers, the users. And benefit of registration: there is part A registration and part B registration to GI. Part A registration is the proprietor who is the owner and in part B registration all the users, all the traders can be registered as the authorised user. Only the authorized users have the right to deal with the particular product; otherwise, it is going to be an infringement. So, part A and part B registration. India has one of the lowest registrations of part B. So, the beneficiaries are not registered.

## What are the Benefits

- **It confers legal protection to geographical indications in India.**
- **It prevents unauthorized use of a registered geographical Indication by others.**
- **It boosted exports of Indian geographical indications by providing legal protection.**
- **It promotes economic prosperity of producers.**
- **It enables seeking legal protection in other WTO member countries.**



So, the basic benefit of geographic Indication registration is, first of all, it confers a legal right on the community which is registering, the association which are registering, (2) it prevents unauthorised use of the registered geographic Indications by others only the beneficiaries and the proprietor can use this particular product, deal with these product and also (3) legal protection to Indian exports and also (4) price premiums, it promotes economic prosperity, especially the rural people because most of the geographic Indications are from rural areas in India and it gives protection in other jurisdictions of WTO member countries.

## Machilipatnam Kalamkari



www.nptel.org

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So, I will show some of them to understand what this geographic Indication is. This is the *Machilipatnam Kalamkari*. It is a very beautiful one in the export market.

## Budiiti Bell & Brass Craft



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Then Bell and Brass Craft, *Budiiti Bell and Brass Craft*, which are world famous again from the time immemorial period.

## Andhra Pradesh Leather Puppetry



www.nptel.org

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And *Andhra Pradesh Leather Puppetry*, one of the oldest arts, the leather puppetry.

## Tirupati Laddu



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And then the famous *Tirupati Laddu*, again, it is very controversial, and many litigations are under the Tirupati Laddu.

## Bobbili Veena



Then *Bobbili Veena*, the equipment, the musical equipment.

## Banganapalli Mangoes



And then *Banganapalli Mangoes*, agriculture product.



## Etikoppaka Toys



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And again some of the *Etikoppaka Toys*, which belongs to Etikoppaka.

## Allagadda Stone Carvings



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And then you can see the *Allagadda stone carvings*, natural products, the famous stone carvings. I have shown you only very few of the Geographic Indications available in India. So, every art form or the product belongs to a particular Geographical region.

## Registration Procedure- Authorization user

- **Rule 56 (1) (2) Amendment: Authorized User**
- **56 - Authorised User: (1) An application for registration of authorized user under section 17 may be made to the Registrar in Form GI-3 accompanied by a statement of the case as to how the applicant claims to be the producer of the registered geographical indication.**
- **(2) A copy of the application made under sub-rule (1) shall be forwarded to the registered proprietor of geographical indication and intimate the same to the Registrar.**



And we talked about authorised users. Authorized users, all the people who use or are beneficiaries, can be registered under the part B registration as authorised users.

## Fee

- **First Schedule: Entry 3A**
- **The fee amount of Form GI-3 has been reduced for an application for the registration of an authorized user under section 17 rule 56(1) from INR 500 to INR 10.**



So, now they have made it the very simple, the process very simple. A half-page application with a 10 rupees fee can register the person as an authorized user in India. So, this is to encourage, this amendment was made very recently to encourage more and more people to register as beneficiaries under the Geographical Indications.

Geographical Indications of Goods (Registration & Protection) Act, 1999  
Geographical Indications of Goods (Registration & Protection) Rules,  
2002  
Form GI  
3A

Application for the Registration of an Authorized User [Section 17 (1), Rule 56  
(1)] Fee: Rs. 10 [ See entry No.3A of the First Schedule]

(1) Name of the Applicant (proposed Authorized user): \_\_\_\_\_  
 (2) Address of the applicant: \_\_\_\_\_  
 (3) Address of service (if different from Above): \_\_\_\_\_  
 (4) Registered Geographical Indication for which application is made: \_\_\_\_\_  
 (5) Email id: \_\_\_\_\_  
 (6) Phone/mobile number : \_\_\_\_\_

Declaration:


(1) I hereby declare that I have enclosed the statement of case and evidence of due service of copy of my application to the registered proprietor (Name of registered proprietor) for , registered as a Geographical Indication.

(2) I also declare that all the above information is true and correct to the best of my knowledge and belief.

(3) I undertake that if any of the information is found incorrect or false, my application may be rejected and if already accepted, my registration maybe revoked and my name removed from Part B of the register.

Date: \_\_\_\_\_  
 Place: \_\_\_\_\_


SIGNATURE



Also, you can see that this is a very simple application for part B registrations, and the government has done it with the objective of increasing the number of registered beneficiaries in India, so that, more and more people will be getting benefits, economic benefits.

## Punishments

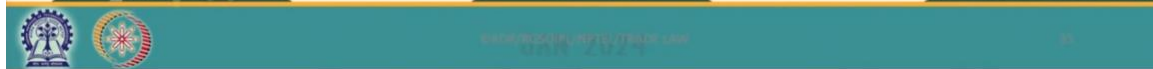
- **The Act provides for both civil and criminal remedies for infringement.**
- **The civil includes imposition of fines, forfeiture to government of all goods and things means of which the offence had been committed, damages, account of profit, together with or without any order for delivery of the infringing label and indications for destruction or erasure.**
- **The criminal remedies includes imposition of fine or imprisonment or both.**



And also, as I have already said there are civil remedies as well as criminal remedies. So, civil remedies include, like any other intellectual property law, imposition of fines, then forfeiture of goods, confiscation of goods, then, accounts of profit and then the infringing labels - taking into custody of infringing labels, Indications, destruction or erase and criminal remedies include imposition of fine or imprisonment or both. So, like copyright Act, GI Act is another Act with imprisonment or criminal remedies, but in India hardly this particular provision is used against the exploiters or infringers.

## Punishments (Contd.)

- In addition the statute vide section 25 prohibits registration of GI as a trade mark.
- The Registrar of Trade Marks shall *suo motu* or at the request of interested party refuse or invalidate the registration of a trade mark which consists of a GI with respect to goods not originating in the territory which such GI indicates, if use of such a GI as a trade mark would confuse or mislead the public as to the true origin of the goods.
- However, the Act protects use of trademarks that consists of a GI where it is registered in good faith under the Trade Marks Act or where the right to such trade mark was acquired prior to coming in to force of the Act.



So, you can see that wide powers are given to the *Trademark Registry* as well as the proprietor, but so far, there are not many cases in India, against infringers for Geographical Indications.



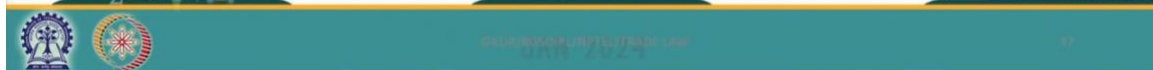
GITAGGED® Kullu Pashmina Stole  
(Maroon)  
★★★★★  
₹ 6,658 incl. GST



GITAGGED® Kullu Pashmina Stole  
(Grey)  
★★★★★  
₹ 6,658 incl. GST



GITAGGED® Kullu Pashmina Stole  
(Pink)  
★★★★★  
₹ 6,658 incl. GST



And again comes the economic benefits. So, *Kulu Pashmina* is a registered geographical indication, but I have taken these pictures from an e-commerce website. You can see the price 6,658 INR, very highly priced with a price premium, but the question is, these e-platforms are making a lot of money, a lot of price premiums - they are making. The most important question is whether these price premiums are going to the manufacturers, the users, or the beneficiaries. So, in India, there is no provision for benefit sharing in Geographical Indications. So, it is very important, this price premium. So, it is 6000 INR; I do not have any idea what is exactly the price which is going to the producer of these

*Pashmina* Stalls. So, it is a very beautiful Stall; *Pashmina* Stalls are famous worldwide. We export them at a very high price, but actually, whether these price premiums are going to the people or not is very important.

## Products and Economics

- **High-quality products with the potential for international markets.**
- **Consumer identity.**
- **Quality control has no authority.**
- **Regional labelling with quality.**
- **Benefit for remote regions and artisans.**
- **Improving the income of farmers, artisans, and beneficiaries.**
- **Creation of collective brands.**



So, the economics of Geographical Indications is very important. Yes, everybody knows that these are high-quality products, and there is a lot of potential in the international markets. It gives consumer identity, and presently, the quality control of all Geographical Indications is very weak. Labelling and quality control is one concern, and if it is marketed properly, lots of farmers, producers in remote regions, and artisans of India will benefit, and also the government can make collective brands. Because if you make whatever the cost is, if there is no economic benefit, then there is no significance for the protection of that intellectual property.

## Price

- **Price premium should reach to lower level.**
- **Producer groups and societies should be created.**
- **No mechanism for benefit sharing.**
- **Fostering market power and branding should happen.**
- **Cultural tourism.**
- **Special showrooms.**



And as I told you, the price premium should reach the lowest level of producers, and there must be a benefit-sharing mechanism to the poor people. Then there are a lot of suggestions with regard to the Geographical Indications.

## Consumer Benefits

- **Product origin and identity.**
- **Safety and quality products.**
- **Producers get more income.**
- **Economic prosperity of local communities.**
- **Incorporating CSR and fair trade into GI protection.**
- **Fair wages**
- **Education and training**
- **Guaranteed compliance with human rights.**
- **Imposing positive conditions for using GIs.**



And there must be consumer benefits, a lot of consumer benefits can be there.



Now, the Government of India has come out with a common logo for Indian Geographical Indications. Still, nobody uses it because there is no provision for mandatory use of this particular logo, other than the individual logo. So, this should be made mandatory, so that everybody will use, with every product they will use this. So, the people also can slowly identify that, yes, this is the Indian Geographical Indication. So, the government must make it mandatory to use this particular logo.

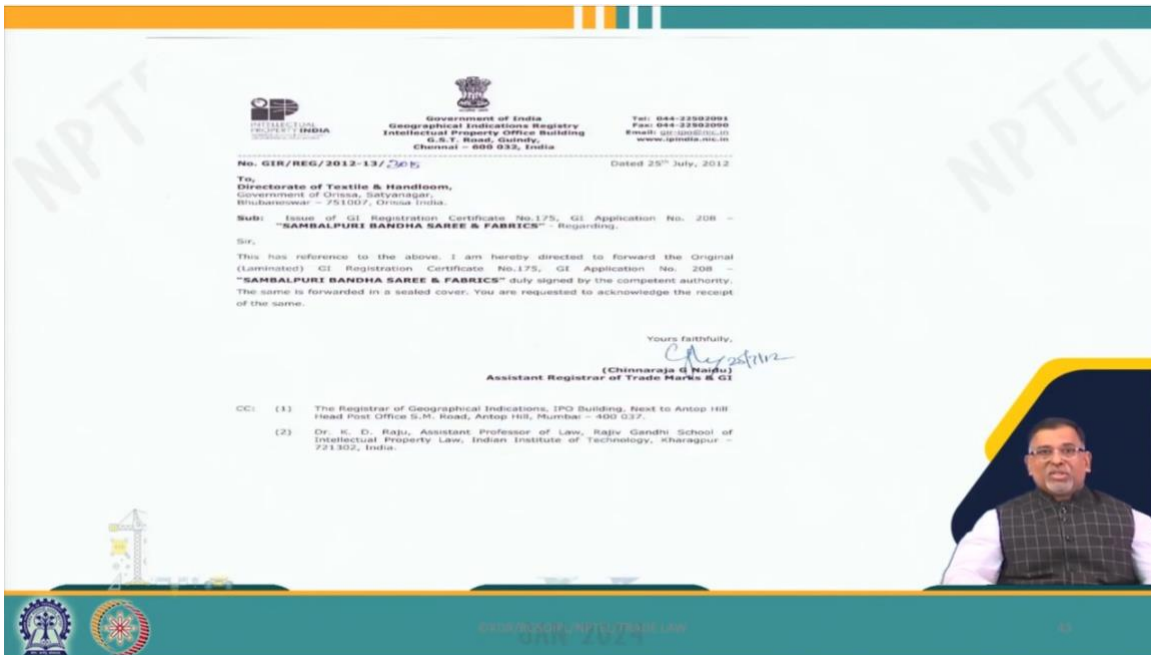
## Sambalpuri saree



And you can see that we have registered the Sambalpuri Saree from Orissa, the famous Sambalpuri Saree. And this kind of famous celebrity gives a price premium for the products. So, appropriate marketing strategies must be adopted, and one of the very successful products from Orissa is the Sambalpuri Saree, which is exporting a lot, a huge export market with a price premium exists. So, this can happen only when it is properly marketed with the help of different people.



So, registrations are done and certificates are given.



So, you can see the logo.



So, we have not only registered this textile product but also under class 24, the logo is also registered with Sambalpuri Saree and fabrics. So, this kind of registration will empower the people those who are producing this, with a price premium, with an economic benefit. So, if that economic benefit is not really going to the people, then there is no need to protect this as intellectual property, as a community right.



## Success story – Araku Valley Arabica Coffee



So, I already said that the story of Araku coffee is the Araku Valley Arabica coffee. Now you can see the shops in the streets of Germany, these shops are not in India. So, you can see how a good, branded product, GI product, can be exported, and you can leverage price premium. This Arabica coffee shop is in Germany. So, it is branded and marketed in beautiful packaging systems. So, you market it as a success story. So, there are so many success stories in India and this should spread to each and every GIs of India. So, poor people in India can be benefited from this.

## TRADE SECRETS



So, what I want to say is Geographical Indication is a community right, a very beautiful intellectual property, which is the only intellectual property, which is allowed as a community rights and which can get a lot of leverage of price premiums and benefit the poor people, but it will depend upon how you implement it. One of the other highly

successful stories, if you take it from other countries, is the *Scotch Whisky Association*. The Scotch Whisky Association goes to each and every country and enforces their intellectual property and everybody gives royalties if they use their name. So, the world-famous products *Whisky, Scotch Whisky, Vodka, Tequila, California Apples*, may be other hundreds and thousands of products, world-famous products, you can sell anywhere in the world markets.

So, we will move on to Trade-secrets, the other category, or I would say the seventh category of intellectual property law, which is mentioned under the TRIPS Agreement. So, what is the Trade secrets? The name itself says if it is keeping something secret, the question is whether it can become a Trade secret. The answer is no, it must be related to trade. So, the basic protection of Trade secrets is provided under the Trade secrets provisions of the TRIPS Agreement.

## Trade Secrets - Value

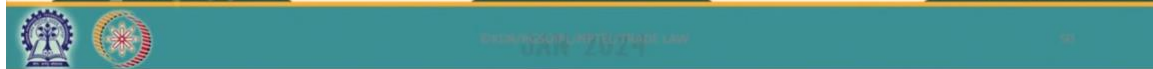
- **Biswamohan Pani, a low-level engineer at Intel, made off with information valued by Intel at more than \$1 billion, according to a Nov. 5 indictment in 2008.**
- **A former Dow research scientist has been charged with stealing trade secrets.**
- **The indictment alleges that Kexu Huang - a Chinese national who was granted permanent legal status in the US - stole trade secrets while employed at Dow AgroSciences from 2003 to 2008.**



So, you can see very recently or from time to time, there are a lot of allegations against employees, by the companies, of theft of Trade-secret. Theft of Trade-secret is an offence in many of the countries. In the US, there are special legislations, which prohibits and also there are civil and criminal punishments. So, you can see the espionage of industrial secrets, trade-secrets, data secrets, taken away by different employees.

## Theft by Indians

- **Feb 18, 2011 - An Indian ex-employee of pharma company Bristol-Myers-Squibb , who admitted stealing trade secrets from the drug manufacturer for his planned business venture in India, was awarded a year in jail today, a sentence he has already served. Shalin Jhaveri, 30 is expected to be deported to India.**
- **May 29, 2014 - An Indian engineer Ketankumar Maniar (37) admitted, pleaded guilty to stealing trade secrets from two global medical technology companies based in New Jersey and faces up to 20 years in prison when sentenced.**



You can find a number of cases and yes you can see sometime Indians are also involved in some of the cases in the US. So, all these news items shows that, 20 years in jail time and deportations, punishments, millions of rupees damages. So, in certain cases, you can see very interestingly 20 years jail time in India. So, the life imprisonment is generally calculated up to 14 years and then again recalculated for some years of deductions. So, what I want me to say is that the Trade secrets theft is considered by some of the countries very strictly and Trade secrets protection is one of the agenda of the TRIPS Agreement.

## What is a Trade Secret?

- **In its simplest terms, a trade secret is information which a business wants to keep secret, because keeping the information secret helps the business or the release of the information could harm the business and help its competitors.**
- **Unfortunately, application of the trade secret law is a good deal more difficult than stating what it does. There is no trade secret law, although some statutes provided similar protection in certain limited circumstances.**



So, what constitutes secret? Which secret becomes Trade secrets? So, it can be any information, with a business, which a person wants to keep as secret, because keeping secret is very important with regard to Trade secrets. Once it become public it is no more

a Trade secrets. If the the competitors can steal it any point of time. So, once it become public it is no more a Trade secrets. So, most of the countries have Trade secrets law, but India does not have a Trade secrets law. But some of the provisions, common law provisions and other provisions of contract law and other laws are applicable in India as well.

## Definition - TRIPs

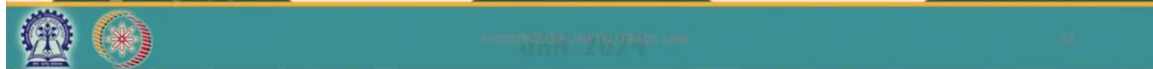
- According to *Art. 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)*, a trade secret is some information which:-
- Is not generally known or readily accessible by people who normally deal with such type of information.
- Has commercial value as a secret.
- Was kept secret by the lawful owner through reasonable means.



So, the definition says that, Trade secrets is some information, which is generally not known or readily accessible by people who normally deal with such type of information and that particular information has a commercial value, when kept as a secret and also that particular secret is kept as a secret by lawful owner through reasonable means. He has taken all precautions to keep it as a Trade secrets. So, information is not readily accessible to ordinary people, has a commercial value and the owner must have taken reasonable means to keep it as a secret.

## Definition – TRIPs (Contd.)

- ...all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, analyses, program devices, formulas, designs, prototypes, methods, techniques,
- processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if - (A) the
- owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public...



This includes all forms of financial data, business data, scientific data, technical data, economic data, engineering information on patents, plan, analysis, programs, formulas, designs, prototype, methods, techniques, you can see that anything which can be kept as a Trade secrets. So, you can keep it as a tangible product, you can keep it as an intangible product as well, because now electronically every information can be kept, physically or electronically, graphically. So, any means and also they must have taken, they have kept this particular information, device very secretly as well as they have taken reasonable means to keep it as a secret and accessibility: no accessibility to the outside world, that is also very important.

## National Innovation Bill, 2008

- S.2(3) - “Confidential Information” means information, including a formula, pattern, compilation, program device, method, technique, or process, that:
  - (a) is secret in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (b) has commercial value because it is secret; and
  - (c) has been subject to reasonable steps under the circumstances by the person lawfully in control of the information, to keep it secret.

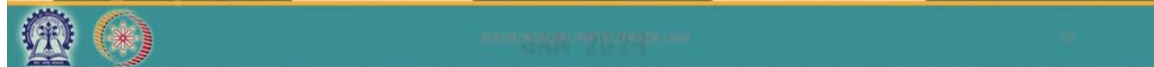


So, India came out with a *National Innovation Bill* in 2008 in order to comply with the TRIPs Agreement which says that what do you mean by confidential information.


Confidential information according to that particular bill: confidential information means information including a formula, patent, compilation, program, device, method, technique or process that is a secret. So, precise configuration assembly of its components generally known among other people has a commercial value as a secret, reasonable steps have been taken by the owner to lawfully keep that particular information as a secret. So, we have taken the TRIPS provisions as such into the 2008 bill.

## Value

- **2003 IPO survey to the effect that 88% of the corporate respondents considered trade secrets as their really important intellectual assets.**
- **On average, large European firms applied for patents on only 36% of product innovations and 25% of process innovations.**
- **Patent – 20 years protection**
- **Trade secret – ever greening**





The bill was never passed and now the government again want to come out with a New Act. So, the *Data Protection Bill* was passed, but still the government wants to come out with a Trade secrets law. So, every company knows that they have Trade secrets, Trade secrets assets, and some of them apply for patents and some of them apply for other means of intellectual property, but most of the companies want to keep their top secrets as Trade-secret. For example, why they want to keep it as a Trade secrets? It is very simple, the patents have only 20 years of protection and after 20 years it will be in the public domain, but Trade secrets are evergreen until it is leaked, until it is in the public domain.



Merchandise 7X is the "secret ingredient" in Coca-Cola and has apparently remained a secret since its formulation in 1886.








130 years

\$60 Billion

So, one of the most well kept Trade secret is Coca Cola mix. For the last 130 years, the Coca Cola ingredient is kept it as a Trade secret. It was created in 1886 and still it is being kept as a Trade secret, no patents and the trademark value of Coca Cola: only the trademark value of Coca Cola is 60 billion: calculated to be 60 billion and this is only for the trademark of Coca Cola, not the assets. This 60 billion value is only for the Trade secrets. Once the Trade secrets is in the public domain then the entire asset of Coca Cola is going to get eroded. So, their trademark value is 60 billion because they kept it as a Trade secrets for the last 130 years.

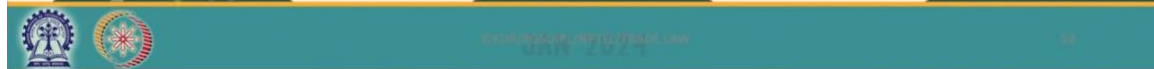
## Metal Mirrors of Aranmula

So, this is a Geographical Indications from Kerala, India, Metal Mirrors of Aranmula. So, these are completely metal mirrors. So, the entire Trade secrets is known by one family.

## Metal Mirrors of Aranmula

- Some undisclosed metals are alloyed with copper and tin to cast the Aranmula kannadi in typical clay moulds.
- The exact proportions of the two metals and the techniques of crafting it into an excellent reflecting surface is always kept as a trade secret.
- The method is the age-old lost-wax process in traditional style after melting the metals in a furnace fitted with a manual blower.
- Today, only five artisan families know the the metallurgical secret of the Aranmula kannadi, the world-famous metal mirrors.



So, it is a world famous mirror, used from metals and the mix of these metal material is considered as Trade secrets. So, from age old times, everybody knows the traditional style of making the mirrors, but this is specifically made of metal in furnaces and by mixing metals and it has always been kept as a Trade-secret. Presently there are only 5 artisan families left making this world famous mirror, keeping it is as a Trade secret. So, once the Trade secret is in the public domain, they will no longer be able to keep it as a Trade secret.

## Requirements

Courts have identified a number of factors relevant to determining whether business information satisfies the secrecy requirement. These factors include:

The extent to which the information is known outside the business.

The extent to which the information is known by employees and others involved in the business.

The extent of the measures undertaken by an employer to protect the secrecy of the information.

The value of the information to the employer

The amount of effort or money expended by the employer in developing the information.

The ease or difficulty with which the information could be properly acquired or duplicated by others.



So, there can be multiple protections. So, basically, the Courts in India have consolidated what are the prerequisites, prerequisites of a trade secret. So, how much of this particular information is related to your business and the extent of information known by its employees. So, you have to keep it away from your employees and the extent of the



measures undertaken by the employer to protect the secrecy of the information. The value of the information, to the employer and the amount of effort and money spent to keep it as a secret information and how easily it can be duplicated by others whether they have access or not, access to such kind of information: these are some of the very important criteria.

## Examples (1)

### Technical and scientific information:

- technical composition of a product paint
- manufacturing methods weaving technique, baking clay, metal casting, embroidery
- know-how necessary to perform a particular operation how to dye with natural Dyes?
- designs, drawings, patterns, motifs



So, the technical and scientific information, the technical composition of a particular product, for example, a paint, a medicine, is very important. Manufacturing methods and *know-how*, design, drawings and motifs, all these can be very important for a particular product.

## Examples (2)

### Commercial information:

- list of clients
- customer buying preferences
- supplier arrangements
- business plan
- marketing strategy



Technical and scientific information, commercial information, list of clients, customer buying preferences, supplier arrangements, business plan, marketing strategy, all these can be Trade-secret.




## Examples (3)

**Financial information:**

- internal cost structure
- price lists

**Negative information:**

- details of failed efforts to remedy problems in the manufacture of certain products
- unsuccessful attempts to interest customers in purchasing a product



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Financial information and also in some cases industrial information, industrial intelligence gathering. You collect the intelligence of working of your competitor and then the products, the negative effects of the products, so negative information can also be considered as Trade secrets.

## What qualifies as a Trade Secret?

**Three essential legal requirements:**

- 1. The information must be secret wheel technique for pottery is no trade secret
- 2. It must have commercial value because it's secret
- 3. You must have taken reasonable steps to keep it secret *"not generally known among or readily accessible to persons within the circles that normally deal with this kind of information"*



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So, the main legal requirement includes (1) the information must be secret, (2) it must have a commercial value and (3) reasonable steps must have been taken to keep it secret. So, if no reasonable measures have been taken by the owner, it is readily accessible to his employees or the person dealing with it, then it cannot be considered as a Trade secret, it

won't qualify to become a Trade secret. So, these three essential legal requirements are very important to keep a Trade secrets.

**Only protection against improperly acquiring, disclosing or using:**

- people who are automatically bound by duty of confidentiality (incl. employees)
- people who have signed non-disclosure agreement
- people who acquire a trade secret through improper means
  - theft, industrial espionage, bribery

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And also we can see that, the protection is against improperly acquiring or disclosing or using. So, only theft is prohibited, independently you can come out with the mix of Coca Cola. Independently you can do the research and come out with the mix of Coca Cola that is not the violation of any Trade secrets law. So, people who are bound by the duty, they cannot disclose, for example, employees and most of the time the trade-secrets are leaked through employees. So, people: those who sign Non-Disclosure Agreements (NDAs) and people: those who have acquired trade secrets through improper means, all these are protected actually and legal acquisition is not prohibited.

**Some people cannot be stopped from using information under trade secret law:**

- people who discover the secret independently, without using illegal means or violating agreements or state law
- people who discover through reverse engineering

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And then, Trade secrets law says that the people who discover the Trade secrets independently, you cannot punish them, using legal means if they acquired it. And then also, you can see that people who discover that particular formula through reverse engineering a product then also it is not a violation. So, if somebody makes the Coca Cola formula through reverse engineering it is not the violation of Trade secrets law.

# TRADE SECRET PROTECTION PROVIDES NO EXCLUSIVITY



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And Trade secrets as I told you that, Trade secrets law protects no exclusivity, that means, Trade secrets law protects from these kind of activities.

## 1. Identify trade secrets

Considerations in determining whether information is a trade secret:

Is it known outside your enterprise?

Is it widely known by employees and others involved within your enterprise?

Have measures been taken to guard its secrecy?



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At the same time, what are the measures to be taken by the owners in order to avoid the Trade secrets leakage or protection. So, first of all, you have to do an audit. So, what are the Trade secrets in your company? Whether it is known to others outside your company or enterprise? Whether it is known to your employees involved? And what are the

measures you have taken to protect it as a secret? How much effort? How much money have you spent? How much effort? How much measures? What are the measures to be taken for keeping it as a secret?


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What is the value of the information for your business?

What is the potential value for your competitors?

How much effort/money spent in collecting or developing it?

How difficult would it be for others to acquire, collect or duplicate it?



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Then what is the value of that information? And what is the potential value for your competitors? The same information: if it goes to the competitors, what is the value? And how much money you spent for developing it? How difficult it is to acquire or how difficult it is to duplicate?

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## 2. Develop a protection policy

Advantages of a written policy:

- Clarity (how to identify and protect)
- How to reveal (in-house or to outsiders)
- Demonstrates commitment to protection → important in litigation



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Second every company must develop a Trade secret policy so that means, every company must have a Trade secret policy. First you identify the products, identify the documents and then you restrict the access. So, that means, every company, every establishment must have a Trade secret policy for protection.

### 3. Educate Employees

- **Prevent inadvertent disclosure (ignorance)**
- **Employment contract :**
  - **Brief on protection expectations early**
  - **NDA/CA/NCA**
  - **obligations towards former employer!**
- **Departing employees :**
  - **exit interview, letter to new employer, treat fairly & compensate reasonably for patent work, further limit access to data**



Then you educate the employees. So, you educate the employees and you tell them that how you are going to be liable for disclosing such Trade-secret and enter into Non-Disclosure Agreements(NDA), Non-Competing Agreements(NCA) with employees and also you have to tell them that what are your obligation towards the former employer and the present employer and there must be exit interviews. There must be exit interviews of employees those who are working in very critical fields, those who have access to data and you have to make sure that they do not have access to that data at the last moment. You restrict access.

### 4. Restrict Access

- **to only those persons having a**
  - **need to know**
  - **the information**



How would you restrict access? Then every employee must know what he is supposed to know not more than that. So, the information one must know, only to the extent of knowing that particular employee. Restrict access.

## 5. Mark Documents

- Help employees recognize trade secrets → prevents inadvertent disclosure
- Uniform system of marking documents
  - paper based
  - electronic (e.g. 'confidential' button on standard email screen)



Then mark the documents with different colours: important, confidential. And this documentation: keeping it now in the digital era is very difficult, to keep information as confidential. So, you have to take additional efforts, cyber security schemes, cyber security to be increased to keep these information as confidential. Emails: what email you can send from your company and what email you can receive from your company, whether these employees are using it for personal purposes, every company to take into account.

## 6. Physically isolate and protect

- Separate locked depository
- Authorization
- Access control
- log of access: person, document reviewed
- Surveillance of premises
- guards, surveillance cameras
- Shredding



And physically isolate and protect this information, whether it is in computer format or in the hard format. Access control, login controls, surveillance: now in surveillance also the most effective is electronic surveillance and certain documents are to be destroyed, shredding, this also you have to do.

## 7. Maintain Computer Secrecy

- Secure online transactions, intranet, website
- Access control (authorization, password)
- Mark confidential or secret (legend pop, or before and after sensitive information)
- Physically isolate and lock: computer tapes, discs, other storage media
- Monitor remote access to servers
- Firewalls; anti-virus software; encryption

Then the most important thing now every company must take care of is to maintain the computer secrecy. Now everything is an online transaction. So, it is through websites, it is through internets, it is through emails. So, access control system must be established and confidential information to be separated. There can be a digital separation as well as physical separation and put in lock and key or this information to be shifted to some other location, safe location, even in computer, the facilities, safe servers and then remote access: you have to monitor remote access. So, you can see that cyber or digital, complete digital security is to be implemented at every establishment, in order to keep maintaining these particular secrets.

## Conclusion

- **Geographical indications have the potential to contribute to economic policy objectives. GI reduces quality uncertainty, secure intellectual property, lead to a price premium, raise income in rural areas, improve economic cohesion and foster market power.**
- **Under Trade Secrets, secrecy must be “substantially secret,” it does not have to be absolute.**
- **In India, there is no specific law in India that protects trade secrets and confidential information. However, Indian courts have upheld trade secret protection on basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts to a breach of contractual obligation.**

So, today we talked about geographic indication and trade secrets. So, we elaborately talked about the geographic Indications. So, in the geographic Indications always a



particular product is related to a particular geographical origin, whether it is Odisha Rasula, or it is Bengal Rasula. So, it is related to that particular region. It is famous because of that particular region and because of the reputation of the product, and this is the only community right which is available within the entire seven categories of intellectual property law. It cannot be owned by an individual, even though all intellectual properties are private rights.

When it comes to the Trade secret law, in some countries like the US, there is special legislation, like the Industrial Espionage Act. Every state has a Trade secrets law, but in India, we still have not developed a Trade secrets law. The TRIPS Agreement obligations are very simple with regard to Trade-secret as well. So, the TRIPS defines what constitutes a secret as a Trade secret. The basic minimum criteria are provided by the TRIPS Agreement. So, I have explained to you some of the measures every establishment should adopt to keep this information secret. So, in India, we do not have a special law, but we use the common law and common law principles as well as other legislations. So, the breach of confidence and, breach of Agreement, breach of other contractual obligations are dealt with under civil law. So, there is very little scope for punishment.

So, what I want to say is that India should develop a full-fledged Trade secrets law because it is high time, after 26, or 27 years, more and more companies and foreign companies are coming to India to do business. So, they have to keep their trade secrets intact. So, if there is no legislation and the protection is under the common law, it will be very difficult for enforcement; at the same time, for geographic Indications, there must be provisions for price premiums to be distributed to the lowest level of producers. So, these two categories of intellectual property law, especially GI law, are very important for India in the future, and the number of registrations should increase because the whole world is registering all their assets, intellectual assets. India should also register more and more assets, may be 5000 to 10000 products, which you can identify from India. So, at the present pace, if they are going, they may take the next 50 years to register 10000 because so far, they have hardly registered 450 to 500 Geographical Indications from India. So, this is a TRIPS obligation, India has to implement the Trade secrets law as well and the entire category: seven categories of intellectual property law is very important for the present traders because everybody must know the present TRIPS Agreement because 164 countries are dealing with the TRIPS Agreement and they have to implement at the domestic level uniformly, the minimum standards are to be implemented uniformly including India. So, this was all about the TRIPS Agreement and the protection of intellectual property.

Thank you.