

Intellectual Property System to Enhance the Tourism Competitiveness in India – A Conceptual Framework

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ABSTRACT

The Paper used secondary data on Intellectual Property Rights and Tourism to develop a better framework on how the system of Intellectual Property Rights can be channelized to enhance the competitiveness of tourism industry in India. The study focused on concepts like trademark, Geographical Indications and Copyrights. Proper Protection measures of Intellectual Property Rights System and the use of the same in tourism industry can act as competitiveness boosters and pillars of success and survival of the industry in the dynamic scenario. In Short, the IPR is emerging as an efficient tool of competitiveness specifically for dynamic sectors like tourism.

1. Introduction

Tourism is one of the fastest growing industries in Indian economy. It is an important source in earning revenue and in creation of employment opportunities. The Travel and Tourism sector in India made a total contribution of 9.6 per cent of the total GDP and 9.3 percent of the total employment with 40,343,000 jobs in the year 2016 (WTTC, 2017). The number of foreign tourist arrivals in India is 8.80 million during the year 2016 with an annual growth rate of 9.7 percent (GOI, 2017). However, it is a very competitive industry where adaptation to the changing needs is crucial for the long term growth. In this scenario, innovation is inevitable for the survival of the industry in the long run. Moreover, the tourism sector around the globe has unique features in terms of geographical, cultural and heritage parameters. These characteristics pave way for a country to offer more unique goods and services. Ultimately, the protection of innovation and uniqueness of the tourism products and services of the country is highly important as far as the modern competitive world is concerned. It is in this context that IPRs act as an efficient tool of competitiveness for tourism industry.

'Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time' (World Trade Organisation). The IPRs enhance the competitiveness of the firms improving their technical knowhow and potential to expand their business. Protection of IPRs potentially benefit developing countries improving their competitiveness as suggested by World Bank, World Intellectual Property Organization (WIPO) and United Nations Conference on Trade and Development (UNCTAD) in their publications (Janjua and Samad, 2008). However the enforcement is also important in case of IPR laws to protect the IPR. Some countries may have strong laws but weak enforcement make IPR a failure (R. L. O. Jr., 2000). Furthermore the IPR protection is said to have a positive relationship with innovations of a country. Apparently following strong IPR protection measure is crucial for economic growth

irrespective of whether the country is a developed or developing one (Yang et al, 2014).

Ultimately the creation and enforcement of IPRs are important as Intellectual Property System serves as an effective business tool to protect the unique creations and to enhance the competitiveness. The concept of Intellectual Property System can also be beneficial to the tourism industry with varied possibilities of added value and productivity. The system helps the country to protect the uniqueness of the products and services in the tourism industry and the tourism industry could also reap the benefits of this tool to cope up with the ever increasing challenges and competition. So this paper mainly focuses on:

- Understanding the concept of Intellectual Property System – Trademarks, Geographical Indications and Copyrights.
- Developing a conceptual framework on how Intellectual Property System can be used to enhance the tourism competitiveness in India.

2. Intellectual Property System – An Overview

Intellectual Property Rights provide protection to the unique creations and innovations of people. It is usually divided into two categories. *Industrial Property* including patents, trademarks, industrial designs and geographical indications and *Copyright* providing protection to artistic, literary, architectural works etc. (WIPO, 2004). The benefits of following an IPR system mainly include the following:

- Legal protection to new creations and innovations.
- The companies will be willing to invest in new innovations without any hesitation if it is protected by IP system.
- More resource flow helps in economic growth, employment generation and even improvement in the standard of living of people.

In short, IP system helps in social, cultural, technological and economic development of a country.

2.1. Trademark

Trademark is a distinctive sign identifying a good or service which provides exclusive right to the owner over the good or service and resists others from using the same without the consent of the owner. 'Under the common law, a person becomes the owner of a trademark by adopting a distinctive word, name, symbol or device, or any combination thereof, to indicate the origin of goods manufactured or sold by him, and by commencing the use thereof in the marketing of his goods. Provided that he was the first to use the distinctive word, name, symbol, or device, or combination thereof, on the particular type of goods, and further provided he uses it continuously, he is the owner of that trademark, at least within the geographical area in which he was the first to use, and has continued use of it' (J. J. M. Jr., 1967).

It can be registered or unregistered. Registered trademarks will provide legal protection as long as the registration is renewed with fee payment and unregistered trademarks will provide protection as long as no one opposes the use of such mark. The owner might allow others to use the mark with certain conditions like a fee payment. A trademark indeed traces back the product to its origin and highlights the ownership provided the merchant should be wise in selecting the word or mark as a purely descriptive word commonly used among the public can attract infringers using the same word in a descriptive sense for a competing product (Liddy, 1931). Furthermore mere registration of a trademark is not sufficient enough; the promotion of the product through adequate advertising measures is needed so as to avoid other names or brands conquering its place in the market (Brien, 1976)

Trademarks can help the firms to build a better image among the customers for the brand. These also have a significant influence on the financial aspect of a firm wherein brand awareness of consumers improves the firm's cash flows (Krasnikov et al, 2009). Trademark is further divided into the following:

- Collective Marks – These are marks owned by an association of people where members get an exclusive right to use the same by adhering to certain pre-set conditions by the association.
- Certification Marks – These are marks provided by certain authorities in their legal capacity when the good or service meet the stipulated conditions set by the authority.

2.2. Geographical Indication

Geographical Indication refers to the marks on goods showing the characteristics and qualities attributable to its place of origin. Geographical Indications were introduced by TRIPS (Trade Related Intellectual Property Rights) agreement in Jan 1, 1995. Even without any legislation, Indian judiciary made an effort to promote GIs in the country and later enforced the same by passing Geographical Indications of Goods (Registration and Protection) Act, 1999 and Geographical Indications of Goods (Registration and Protection) Rules, 2002 (Srivastava, 2003). The 1997 marked the beginning of measures of India for protecting its GIs when Ricetec Inc of US started marketing its version of 'Basmati Rice' which India claims as it's GI. India have a lot of unique products which can be located to different

geographical regions and it is indeed a requirement to ensure higher levels of protection to all products of unique origin (Ahuja, 2004).

GIs are often said to be related to trademarks but both are two different concepts. The difference between trademark and geographical indication is trademark protect the unique features of the product and provides an exclusive right to the owner whereas geographical indication shows that the product originated from a particular location and has the reputation and qualities of the place. GI does not belong to an enterprise alone like in the case of a trademark. A GI can be used by several enterprises provided the products features can be attributed to that particular geographical region (Ahuja, 2004). The chapter IX of Trademarks Act, 1999 provides for registering GIs as certification marks. However the GIs registered as certification marks in India is unknown (Rao, 2005).

2.3. Copyrights

'Copyright means just what it says; the creator enjoys the exclusive right to make copies of identifiable, reproducible manifestations of creative works that are intellectual property of their creators for certain limited time periods. The property must be of substantive creative merit to warrant such protection – that is, not just an idea or a title' (Davidson, 2000). In a nutshell copyrights provide protection to the artistic, literary and architectural works of the creators. Related Rights is a term closely associated with copyright where performances, sound recordings, broadcasting organizations etc. get rights similar to copyright but at a limited capacity.

Copyright provide a right over the 'works' and prevent others from using it without the consent of the creator. It act as a cushion to protect the authorship and autonomy of the creator and to maintain a better relationship with the audience (Goldstein, 1992).

3. Discussion – IPR in Tourism

The ever increasing challenge of tourism industry is to develop customized products and services with added value and productivity to meet the competition and survive in the long run. This could be solved with the use of IPR protection in tourism industry (Lis-Gutiérrez et al , 2017; Lis-Gutiérrez et al, 2016).

3.1. Trademarks in Tourism

Branding is a communication tool tracing back the product to a specific merchant in the minds of the target consumers. Branding makes the product more attractive among the audience. Trademarks are marks used in branding with a legal backup. Destination branding is very common in tourism sector which can be analyzed from a trademark point of view (Nanayakkara, n.d.). However, it should be registered regionally, nationally or internationally as the situation warrants to reap the benefits of a trademark. Kerala 'God's Own Country' is a registered trademark in India. This registered branding helps in the protection of destination and its products and services.

Certification marks and collective marks can also be beneficial to the tourism industry. Green Globe Certification is a

certification to promote responsible and sustainable practices in travel and tourism sector. A product with these certifications will hold better appeal.



An association of entities can have a collective mark where the members get a competitive advantage regionally, nationally or even internationally provided members comply with the standards set by the association. This collective method further helps various stakeholders of tourism industry to get better recognition and appeal which they don't normally enjoy on an individual basis.

All these certifications and collective marks come under an umbrella branding system improving the competitiveness of the destination and industry both collectively and individually. The only criterion is to register under Trademarks scheme so as to get a legal backup.

3.2. Geographical Indications in Tourism

The small entities can have a competitive advantage when the products are having a mark indicating qualities of a geographical origin. The tourism products will be marketed effectively with the reputation of the Geographical Indication.

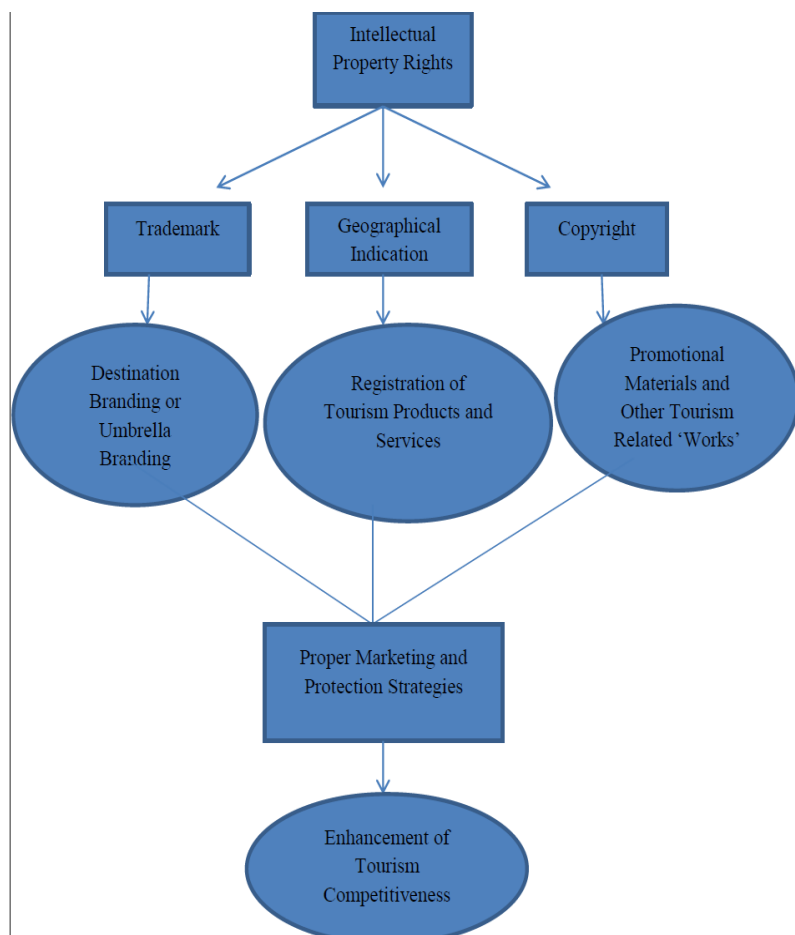
Geographical Indication is having immense potential in a country like India. As many as 326 products such as Kancheepuram silk saree, Alphonso Mango, Nagpur Orange and Kolhapuri Chappal have been registered as geographical indications (GI) so far (The Economic Times, 2018).

It could be observed that many products are already registered as GI. However, mere registration is not enough. The product needs to be properly marketed and protected to reap the benefits of GI in a higher extent. Moreover, for a country like India with cultural diversity, traditional knowledge and skills the scope of GI is high if properly utilised. So the registration of GI should be followed by proper protection strategies along with marketing strategies. GI can also help tourism sector as the area will also be projected in terms of its reputation along with the product attracting tourists.

3.3. Copyrights in Tourism

Tourism also involves artistic works of many people which needs to be protected to have a better competitive advantage. The promotional materials like websites, pamphlets or any other material providing information on the destination and the product or service warrant copyright protection. Any creation considered as 'works' in tourism industry should also be protected for enhancing the competitiveness of the industry.

3.4. IPR in Tourism can be summarized as the following conceptual framework:



Source: Self-made by the researcher

4. Conclusion

The concept of IPR is emerging as an efficient business tool to enhance the competitiveness. This concept is also a blessing to the tourism industry to attract more investment and development. However, mere registration is not sufficient enough to get the benefits of Intellectual Property Rights in

tourism sector. Continuous promotion using marketing strategies and ensuring protection through proper measures is also crucial. The tourism industry with the support of IPR copes with the dynamic environment efficiently ensuring the success and survival of the industry.

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