

# Significance of Geographical Indications Laws in Nepal: A Comparative Study of Bhaktapur "Juju Dhau" and Greece "Greek Yogurt"

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## Abstract

*Juju Dhau (Yoghurt) is popularly known in Bhaktapur (Nepal) with its unique taste and quality. Regrettably it has not acquired global recognition yet. Apparently, Greek Yogurt, a similar type of Yogurt from Greece, enjoys international popularity. In this paper, the researcher conducted a survey alongside key informant interviews to reflect the perception and preference of Juju Dhau and comparatively analyzed the acquired data and information with Greek Yogurt. The result of the study reveals that the primary reason for producing Juju Dhau is its market access, good earning through creation of employment and consumer preferences on Juju Dhau. Additionally, the study reveals the perception of retailers is positive on Juju Dhau due to it being healthy, tasty and greatness in its flavor. The comparative study suggests about the risk of Greek Yogurt having the threat to become a genericide at a particular point of time. In this pretext, the Juju Dhau has to be promoted in international market but due diligence should be given while promoting it taking special reference from Greek experience. Furthermore, Juju Dhau is an intangible cultural heritage of Nepal. Nepal being a party to the Convention for the Safeguarding of the Intangible Cultural Heritage, it has binding obligation to safeguard Juju Dhau. The researcher, after comprehensive analysis of acquired data and information, identified the necessity of sui generis laws to be enacted merely for Juju Dhau. These laws will ultimately facilitate the recognition, protection, and promotion of Juju Dhau in Nepal and beyond.*

**Keywords:** Juju Dhau, Greek Yogurt, Geographical Indication, Intellectual Property, Sui Generis

## I. Introduction

Intellectual property (*hereinafter* IP) is a type of property that is recognized and protected in Article 25<sup>1</sup> of the Constitution of Nepal. It is enforced in case of violation through

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<sup>1</sup> *Nepal Ko Sambhidhan* (Constitution of Nepal), art. 25.

Article 25 of the Constitution of Nepal has stated 'property' as any form of property, including moveable and immovable property, and includes an intellectual property right.

Article 46 of the Constitution of Nepal. The responsibility to protect IPs lies with the Federal government<sup>2</sup>, and, the National Civil Code, 2074 considers IP as moveable property<sup>3</sup>. Further, any property gained or increased from intellectual property or royalty is considered as private property of an individual,<sup>4</sup> allowing them the freedom to exercise control over it.<sup>5</sup>

There are various forms of IP, categorized as industrial property rights for products that can be applied industrially, which extends to incorporating fine arts besides its non-industrial applicability. The term IP is an umbrella term which incorporates creations in its various forms.<sup>6</sup>

Nepal has specific laws for IP protection, including the *Copyright Act, 2059* (BS) for copyrights, and *The Patent, Design and Trademark Act, 2022* (BS) for industrial property protection encompassing patent, design, and trademark. Additionally, the realm of IP extends to the incorporate Geographical Indication (*hereinafter* GI), Traditional Knowledge, Integrated Circuit, Plant Species, Trade Secret, Biodiversity, Genetic Resources etc. These distinct forms of IP are included in the '*National Intellectual Property Policy, 2073*'.

A geographical indication refers to the identification of goods based on their origin and the quality, reputation, or other characteristics associated with that origin.<sup>7</sup> The connection between a product and its place of origin is crucial in identifying products produced in a certain territory.

There are four approaches to safeguarding GIs. The first method involves enacting statutory measures (making the laws by the countries). The second approach is through bilateral agreement followed by adherence to the WIPO's *Lisbon System* for the international registration of an appellation of origin, and finally through the *Madrid System* for the international registration of the Marks.

*Sui Generis* is the Latin phrase which refers to "of its/his/her/their own kind", "in a class by itself", therefore "unique". Within the framework of statutory measure, GIs can be protected through the '*Sui Generis*' legislation that is by making the laws that fit the situation of that country. Further, it may be protected through the Certification Mark, which involves determining standards about any goods, processes, or services. Furthermore, GI may be protected by a Collective Mark which can be used by an association, organization, or co-operative association, who if intends to register a mark to be used merely by the member affiliated with these institutions, can register for the collective mark. Similarly, GI may be protected by laws focusing on business practices within national boundaries.

Although Nepal lacks specific '*Sui Generis*' legislation, it has *Nepal Standard (Certification*

<sup>2</sup> *Nepal Ko Sambhidhan* (Constitution of Nepal), sch. 5.

<sup>3</sup> *The Muluki Devani Sambhita, 2074* (The National Civil Code 2017), Nepal, s. 254.

<sup>4</sup> *Ibid*, s. 256 (1) (e).

<sup>5</sup> *Sambhita* (n 3), s. 256(2).

<sup>6</sup> Latha R Nair & Rajendra Kumar, *Geographical Indication A Search for Identity*, LexisNexis, 2006, pp. 89-96.

<sup>7</sup> *Agreement on Trade-Related Aspects of Intellectual Property Right*, 15 April 1994, Morocco, 1 January 1995, art. 22.

Mark) Act, 2037 made to safeguard Certification Mark, *Directives of Registration of Collective Mark, 2067* for GI protection through Ccollective Mark Additionally, Statutes like *Competition Promotion and Market Protection Act, 2063*, and *Consumer Protection Act, 2075* address business practices within Nepal apparently covering the IP protection.

Among the South Asian Association for Regional Cooperation (SAARC) countries, only Bangladesh, India and Pakistan have enacted '*sui generis*' laws for GIs.<sup>8</sup>

Several international instruments exist for the GI protection, each with its own terminology. *The Paris Convention* uses the terms 'Indication of Source' and 'Appellations of Origin', while *The Madrid Agreement* employs the word "Indication of Source", and *The Lisbon Agreement* refers to "Appellation of Origin"<sup>9</sup>. TRIPS and WIPO use the word "Geographical Indication". Nepal is a party to TRIPs since 2004 B.S. and *The Paris Convention* since 2001 B.S. but not to *The Lisbon Agreement*. Furthermore, *The Treaty Act, 2049* states that the international laws that Nepal has ratified are applicable as national laws. As a party to international instruments, Nepal is obligated to respect, protect, and fulfill the provision of international laws.<sup>10</sup>

## II. Introduction to 'Juju Dhau'

*Juju Dhau* (Yoghurt), is the identity the Bhaktapur<sup>11</sup> In a typical Newa family, every good deed and wish starts with a *Sagun*, a traditional gifting practice, and Yogurt is essential component of it. Various rituals in the Newar community, such as *pujas*, require Yougurt for *tika* and mandatory serving of '*Panchamrit*', a mixture of ghee, milk, honey, sugar, and yogurt, to everyone present. Yogurt symbolizes the full moon and offering '*Juju Dhau*' as *Sagun* is seen as a blessing for the recipient to shine like a full moon. This deep connection to the Newar way of life explains the immense influence of '*Juju Dhau*'<sup>12</sup>. The yogurt is made using traditional methods by locals, as there is no specific manufacturing industry in Bhaktapur dedicated to its production.<sup>13</sup>

'*Bhaktapur Juju Dhau Byawasabi Sangha*' registered, under *Sanstha Darta Ain, 2034*, in CDO consists of 40 individuals. Out of the 40 members, 32 are producers of the '*Juju Dhau*', while the others are not directly involved in its production. The '*Bhaktapur Juju Dhau Byawasabi Sangha*' has its own by-laws that permit for the registration of the '*Juju Dhau*' as the Collective Marks, and they have submitted an application for its registration as a Collective Mark.

There is no official record of the producer, retailer, and consumer of the '*Juju Dhau*' in Bhaktapur. Thus, In the survey research on the perception and preference of yogurt in

<sup>8</sup> Laxmi Sapkota, 'Comparative Study of Sui Generis Geographical Indications Laws in South Asian Countries: A Way Forward to Nepal', *Journal of Global Research & Analysis*, volume 11:2, 2022, p.31.

<sup>9</sup> *The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration*, 31 October, 1950, Lisbon, art. 2.

<sup>10</sup> *Khadgalal Maharjan v. Nepal Government*, NKP 2068 (2011), volume 9, Decision no. 8459.

<sup>11</sup> 'Bhaktapur Municipality: Brief Introduction', *Bhaktapur Municipality*, available at <https://bhaktapurmun.gov.np/en/node/4>, accessed on 28 March 2022.

<sup>12</sup> 'How exactly the famous Juju Dhau of Bhaktapur is made?', available at, <https://www.bhaktapur.com/discover/juju-dhau/>, accessed on 29 March 2022.

<sup>13</sup> Ibid.

Bhaktapur, the researcher has employed a snowball sampling to find out the perception and preference of producer and retailer.

### III. Producer's Perception and Preference of 'Juju Dhau'

A total of 23 respondents' all of whom were producers participated in the survey. The survey aimed to measure the preference and perception of '*Juju Dhau*' using various criteria, which are outlined below:

#### a. Employment (family business or individual)

According to the available data, out of the 23 respondents, from Bhaktapur, 15 of them are engaged in this field as a form of family business throughout various generations. However, eight of them were found doing it as individual trading considering it as part-time business. The data showed that '*Juju Dhau*' has worked as an employment-creating tool and also became an informal source of earning.

#### b. Income

The study reveals that the respondents who have worked for generations in a family business have high earnings and maximum exposure to retailers. Out of 23, four have daily business above one lakh, eight have earned more than fifty thousand per day, seven have earnings above twenty-five thousand per day, and five have earnings less than twenty-five thousand per day.

#### c. Market Access

*Juju Dhau*' is one of the most famous curd produced in Bhaktapur adopts the traditional process of curd making, thus installing its own unique taste, flavor, and texture. Regarding the responders, eight of them supply to Kathmandu, five of them supply to Patan, six of them supply to Bhaktapur, remaining four of them supply to Banepa, Dhulikhel, Nagarkot, and Pokhara too. We can infer from this that it is supplied to various places and has a good market.

#### d. Transfer of Traditional Knowledge:

As being the family business, 15 of them responded that they learned about the skill and technique of actual making of *Juju Dhau* from their family members who passed down the knowledge from generation to generation, and eight responded they learned it through working experience.

#### e. Preference for the Consumption of Juju Dhau:

All respondents said that demand is good all year-round but is high during holidays, festivals, Occasions, and *Jatra*'s.

### IV. Consumer's Perception and Preference of 'Juju Dhau'

79 Customers from Bhaktapur (Durbar Square area, Thimi, *PuranoThimi*, *RadbeRadbe*), were questioned during this survey, including three foreigners. '*Juju Dhau*' is prepared in

a traditional way without the addition of artificial flavor which has secured its peculiar taste, consistency, and flavor. Every respondent mentioned *Juju Dhau* as their preferred choice over various types of curd because of its thick texture and unique flavor.

**a. Reason of preference**

*Juju Dhau* was mentioned by every respondent as their preference over other curd and the reasons behind it are its creamy flavor, sweetness, perfect thickness, unique taste, king of curd, authentic and organic taste.

**b. Taste**

All respondents agreed that the unique taste and flavor of *Juju Dhau* is enhanced by its creamy texture which is loved by many. It has excellent and uncompromised taste.

**c. Quality**

*Juju Dhau* is produced using a traditional method, and all the necessary steps are carried out by the maker themselves ensuring its quality. As a result, its quality is uncompromised, good, hygienic and healthy.

**d. Price (premium)**

56 of the customers claimed that the price was moderate and affordable, while 23 others said it was expensive.

**V. Retailer's Perception and Preference of '*Juju Dhau*'**

**a. Selling preference**

38 Retailers were questioned from Bhaktapur (Durbar Square area, *Thimi, PuranoThimi, Radhe Radhe*), Since '*Juju Dhau*' is more popular among the customers, the 16 retailers offer '*Juju Dhau*' merely as their major preference, and while 22 respondents said they offer both '*Juju Dhau*' and other varieties of curd. However, '*Juju Dhau*' has elevating demand than other varieties of curds.

Preference of only <i>Juju Dhau</i>	Preference of both ( <i>Juju Dhau</i> and others)	Total
16	22	38

**b. Reason of selling**

*Juju Dhau* is popular with people of all age group and the following factors contribute to its sales. The factors include high public consumption, good in taste, holds the legacy of generations, good quality, liked by all.

**c. People's perception**

*Juju Dhau* is well-liked by people because of its creamy texture, good quality, sweetness, local product, unique taste, reasonable price, traditionally made with no added artificial flavor, hygienic and healthy.

The research clearly states that existing GI like *Juju Dhau* should be promoted and protected through the *Sui Generis* GI laws. Details acquired for the survey (snowball sampling) suggest that it is consumed by the consumer in the premium price, the quality is not compromised and to the producer, the know how (traditional knowledge relating to making of *Juju Dhau*) is continually transferring from generation to generations. Further, it is creating employment too. Therefore, for its promotion the own kinds of GI laws are must.

## VI. Introduction of Greek Yoghurt

Greek Yoghurt, also known as Concentrated Yoghurt, Strained Yoghurt, Yoghurt Cheese, Sack Yoghurt & *Kerned* Yoghurt.<sup>14</sup> Its original name is '*Yiaourti*' whose recipe originated in Greece and many call it as '*Mediterranean-style yogurt*'.<sup>15</sup> It has its own special feature<sup>16,17</sup> This product is overwhelmingly preferred by consumers of America, Canada & UK, while China is still experimenting to acquaint with it.<sup>18</sup> Market value of Greek yogurt worldwide is estimated to be \$8.7 Billion as of 2020 Data.<sup>19</sup> Greek Yogurt has the Nutrients like<sup>20</sup> Calcium, protein, probiotics, iodine, and, vitamin B-12. The health benefits of Greek Yogurt includes improving bone health, reducing appetite and hunger, boost metabolism, improves gut health, maintaining good mental health, building Muscle mass, low blood pressure, reducing the risk of type two diabetes, etc.<sup>21</sup>

*Greek Yoghurt is so successful product besides a fact that there are not enough cows in Greece to produce the milk necessary to make the yoghurt.*<sup>22</sup> The records of yogurt in Greece begin in the 5th century BCE with the writings of Herodotus, whereas the process of straining yogurt or making it "Greek" began somewhere in the Middle East.<sup>23</sup> There was a dispute of Greece with the Czech Republic in 2016, when a law was passed that allowed local dairy manufacturer to use terms such as "Greek Yogurt" in violation of European Union legislation on misleading consumers, prompting Greece to lodge a complaint

<sup>14</sup> 'Greek Yoghurt', *Food Specialties*, available at <https://foodspecialties.com/industry-news/dairy-ingredients-industry-news/greek-yoghurt/>, accessed on 3 May 2022.

<sup>15</sup> 'What is Greek Yoghurt', *Yogurt Nutrition*, 27 May 2019, available at <https://www.yogurtinnutrition.com/what-is-greek-yogurt>, accessed on 3 May 2022.

<sup>16</sup> Ibid, Greek Yoghurt is that it has been strained to get rid of most of the whey along with some of the salts and sugars dissolved in it, resulting in a thicker consistency than regular yoghurt. Further, it serves a very thick, creamy, smooth, and non-pasty texture, which is the major driving force of its growth. It is comprised of freshly fermented dairy products with a high protein content of 8 to 12% with a minimum of 8 grams per serving with low sugar.

<sup>17</sup> Ibid.

<sup>18</sup> 'The market for Greek Yogurt: A worldwide trend', *Top Greek Yogurt*, available at <https://www.topgreekyogurt.com/greekyogurtmarket.html>, accessed on 3 May 2022.

<sup>19</sup> 'Compound Annual Growth Rate of Greek Yogurt', *Statista*, available at <http://Source: https://www.statista.com/statistics/296055/global-greek-yogurt-market-share/>, accessed on 3 May 2022.

<sup>20</sup> Lana Burgess, 'Is Yogurt good for you?', *Medical news Today*, available at <https://www.medicalnewstoday.com/articles/323169#summary>, accessed on 3 May 2022.

<sup>21</sup> National Planning commission, *The Fifteenth Five-Year Plan*, p. 36.

<sup>22</sup> 'Court of Appeal Confirms Greek Yogurt must be made in Greece Technology', *Ashurst*, available at <https://www.ashurst.com/en/news-and-insights/legal-updates/court-of-appeal-confirms-greek-yogurt-must-be-made-in-greece-technology-and-ip-newsletter-march-2014/>, accessed on 1 April 2022.

<sup>23</sup> Allie Faden, 'Greek Yogurt: An Origin Story', *Positively Probiotic*, available at <https://positivelyprobiotic.com/the-bacteria-blog/greek-yogurt-a-story>, accessed on 1 April 2022.

at the European Commission.<sup>24</sup> Finally the came in favor of Greece's dairy industry and farmers and citing 'the "Greek Yogurt" is a yogurt of Greece'. Soon after, Czech Republic sent a draft amendment proposal to its national laws before the European Commission to prevent Czech dairies from marketing products.<sup>25</sup>

## VII. Protection of Greek Yogurt as GI

'Greek yogurt' is not protected by a GI but it comes under the *EU Regulation that particularly devised* a provision of food information to consumers an indication of the country of origin, i.e. yogurt originating in Greece.<sup>26</sup> However, following a proposal presented by the Association of Greek Breeders, the Greek Ministry of Agriculture has established a 14-member working group that will prepare the technical details of an application for registration of the name 'Greek yoghurt' under the EU food quality schemes to get a Protected Designation of Origin as well as a Protected Geographical Indication for its yogurt.<sup>27</sup> In 2019, Greece and the Czech Republic jarred over the use of the terms 'Greek' and 'Greek-style'. The Czech Republic issued a draft bill laying down requirements for milk and dairy products, ice creams, and edible fats and oils and included the term 'Greek yogurt'.<sup>28</sup> In US, Greek yogurt is not a uniquely defined product with a federal standard of identity. Any company that claims its product to be Greek yogurt must confirm to the federal standard for yogurt, but the claim of being Greek is a connotation, not a well-dined designation.<sup>29</sup>

The Fage brand has introduced Greek yogurt to America.<sup>30</sup> In Europe Greek yogurt has a high fat content, low protein dose and small participation in the market. In the United States, this product has less fat, more protein with its domain of 23% of sales over other dairy. The differences occur due to the absence of a legal definition of the yogurt concept Greek. Greek yogurt itself is made and consumed on a large scale in Greece, it is usually homemade. Due to this, the differences in the formulations and processing started at the origin of the food.<sup>31</sup> According to recent research by company Nielsen, the success of Greek yogurt depends on three factors: nutritional

<sup>24</sup> 'Czech dairy industry not allowed to use term 'Greek Yogurt', *Keep Talking Greece*, available at, <https://www.keeptalkinggreece.com/2019/02/12/greek-yogurt-czech-eu/>, accessed on 1 April 2022.

<sup>25</sup> Ibid.

<sup>26</sup> 'Court of Appeal confirms Greek yogurt must be made in Greece', *Technology and IP Newsletter*, available at, [https://www.europarl.europa.eu/doceo/document/E-9-2020-001190-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-001190-ASW_EN.html), accessed on 3 May 2022.

<sup>27</sup> Sarantis Michalopoulos, 'Athens to seek geographical protection for Greek yogurt,' *Euractiv*, 9 August 2017, available at, <https://www.euractiv.com/section/agriculture-food/news/athens-to-seek-geographical-protection-for-greek-yoghurt/>, accessed on 3 May 2022.

<sup>28</sup> L Sephard, 'Sensory properties and drivers of liking for Greek yogurts,' *Journal of Dairy Science*, 2013, available at, [https://www.journalofdairyscience.org/article/S0022-0302\(13\)00725-X/fulltext](https://www.journalofdairyscience.org/article/S0022-0302(13)00725-X/fulltext), accessed on 3 May 2022.

<sup>29</sup> Caiyun Liu, 'Essays on Greek Yogurt in the US Market,' North Western University, 2019, available at, <https://arch.library.northwestern.edu/downloads/6h440s794?locale=en>, accessed on 3 May 2022.

<sup>30</sup> Ibid.

<sup>31</sup> Alex Uzêda de Magalhães, 'Chemical composition and sensory analysis of Greek yogurt Traded in the South of the state of Minas Gerais,' *DOAJ*, available at <https://doaj.org/article/5138bcbd6fb040bd9ae67f04161dd5df>, accessed on 3 May 2022.

characteristics, particular taste, and ease/speed of consumption.<sup>32</sup>

Talking about its market in Britain, major supermarket chains are preferring Greek Yogurt produced by Greek enterprises. In Great Britain, the consumption of Greek yogurt type increased significantly last year (representing 11.33% of sales volume and 13.14% in value sales).<sup>33</sup>

The demand for Greek yogurt type is constantly growing in the German markets too.<sup>34</sup> Further, Delish Dairies, which falls within the ambit of Greek yogurt, has launched Delish but made in Nepal. It's the first "Made in Nepal" Greek yogurt available for consumers.<sup>35</sup>

The Greek yogurt is not registered PDO (*Protected Designation of Origin*) or PGI (*Protected Geographical Indication*). But in Britain, there is a clear distinction between the name of Greek yoghurt (Greek yoghurt) and Greek type (Greek style yoghurt) since the late 1980s, after litigation of Greek companies, and was based on legislation (national and European) on consumer protection.

### VIII. Critical Comment

In Collective Mark, there is the risk of becoming the marks as generic terms for example, In *City of Carlsbad et al. v. Kutnow et al.*, 68 F. 794 (1895) United States Circuit Court for the Southern District of New York has decided that Sulphate of Magnesia is the chemical name of Epson salt. Originally, these salts come from the Epson region in the US. Today Epson salt is used to refer to any sulphate of Magnesia. Like this Greek Yoghurt has also become the generic. Therefore, *Juju Dhan* must be protected as the GI.

Nepal is a party to *The Convention for the Safeguarding to the Intangible Cultural Heritage, 2003* in 2010 BS. The Article 2 of the Convention states that the intangible cultural heritage also means knowledge and practices concerning nature and universe. The traditional knowledge of people of Bhaktapur to make *Juju Dhan* is vehemently important. It's also a part of the intangible cultural heritage which need to be protected and promoted.

### IX. Difference between GI and TM

The GI protection through trademark and *sui generis* GI laws are considered a North-South debate. North is understood as Old World (Europe) whereas the South is New World (Argentina, Australia, Canada, Chile, New Zealand, and the United States). North protects its GI through *sui generis* laws whereas, the South protects through trademark laws, especially collective or certification mark protection. US regards GI as a subset of trademark and protect them through trademark (certification or collective

<sup>32</sup> 'Global Greek Yogurt Market Research Report 2021-2027', *Market Research Place*, 2021, available at <https://www.topgreekyogurt.com/greekyogurtmarket.html>, accessed on May 3, 2022.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Magalhães (n 31).

mark), whereas EU considers it as independent IPR and has separate legal protection mechanism.<sup>36</sup>

Nepal is protecting its GIs through the Collective Mark. It has been registering Collective Mark through the *Collective Mark Directive*. To some extent is the Directive shows its inclination towards North and regarding its intention to protect the GIs through the separate GI signifies its inclination towards South.

The protection of GI through Collective Mark and *sui generis* GI laws have the similar objective, i.e. to protect the GI, but the origin of GI, ownership of rights, and terms of protection of the GIs are the fundamental differences between them. The differences between GI and TM are discussed below:

GI epitomizes a link to the country's culture, and history and tradition which generally denotes the natural origin of the goods. Whereas Collective Mark can be created overnight and have the commercial origin of the products.

GI does not, singularly, belong to a particular enterprise and can be used by several enterprises simultaneously.<sup>37</sup> It is owned by governing bodies of groups of producers within a region if a nation state's legislation permits. Some European countries view the collective ownership of GIs as a right "which cannot be licensed or transferred out of the region."<sup>38</sup> Whereas, CM belongs to a person, either an individual or a corporation. Similarly, the terms of protection of GI are unlimited in their duration as has been stated in TRIPs and European Union Regulations. But the terms of protection of CM are limited. For example, the TRIPs Agreement limits trademark protection to "no less than seven years," although indefinite renewal is possible if one meets a condition. GI generally protects one good (i.e. product). Nevertheless, CM may protect multiple goods at a time. But in Nepal collective mark protects one good (i.e. product). GI is a collective right.<sup>39</sup> In contrast, CM is personal property of the group of people. Unlike CM, GI is above human creativity, which means it includes topography and environment.

A GI is a generic description that is applicable to all traders in a particular geographic location to goods that emanate from that location.<sup>40</sup> Whereas, CM is a sign which distinguishes the products of a specific (Collective) trader from those of its competitors.<sup>41</sup>

The right to protect a GI from a wrongful appropriation is enjoyed by all traders from

<sup>36</sup> Xinzhe Song, 'The Role Played by the Regime of Collective and Certification Marks in the Protection of Geographical Indications- Comparative Study of Law and Practice in France, the EU and China', *The Journal of World Intellectual Property*, volume 21, 2018, pp. 437-457.

<sup>37</sup> V. Ahuja, 'Protection of Geographical Indications: National and International Perspective', *Journal of the Indian Law Institute*, volume 46:2, 2004, pp. 269-287.

<sup>38</sup> Melissa A. Loucks, 'Trademarks and Geographical Indications: Conflict or Coexistence?' 2012, *The University of Western Ontario*, available at <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2044&context=etd>, accessed on 3 May 2022.

<sup>39</sup> Dev S. Gangee, 'Sui Generis or Independent GI Protection', *Cambridge University Press*, 2020, p. 256.

<sup>40</sup> Michael Blakeney, 'The Protection of Geographical Indication, Law and Practice', *Elgar Intellectual Property Law and Practice Series*, 2014.

<sup>41</sup> *Ibid*, p. 11

the GI protection mechanisms.<sup>42</sup> CM is protected from a wrongful appropriation at the suit of the registered proprietor of that mark.<sup>43</sup>

GI is not freely transferable from one owner to another as a user must have the appropriate association with the geographical region and it must comply with the production practices of that region.<sup>44</sup> But, TM can be transfer easily.

Countries protecting geographical indications under sui generis legislation, such as the European Communities Regulation, create the possibility "for subsequent GIs to prevail over prior trademarks, and in certain circumstances, the Regulation envisages coexistence between trademarks and geographical indications." Countries protecting geographical indications within their trademark regimes tend to favor the First in Time First in Right principle, which affords protection to the first sign registered, whether Trademark or geographical indication and registered signs enjoy exclusive rights preventing use by third parties.<sup>45</sup>

Hence, the comparative study shows that GI has more benefits over the Collective Marks. Even the report of the task force formed to make more effective work related to industrial property, 2077 has suggested making the laws to provide the geographical indications to the goods, giving the geography's identity also stated that the present *Collective Mark Registration-related Directive, 2067*, should be amended, and the registration of the collective mark must be made simple and clear. Further, it states there is no clear provision for the registration of the collective mark in Nepal in the *Patent, Design and Trademark Act*.<sup>46</sup>

## X. Interview with the Key Informant

*The researcher has identified the need for laws for the recognition, protection, and promotion of 'Juju Dhau' in Nepal through the interview with the 9 key informants of the GI laws that is discussed below:*

### a. Yubaraj Sangroula (Prof. Dr. Ph.D. Former Attorney General of Nepal)

He says '*UtpatiMul Kanoon*' or *Maulik* laws are required for the '*UtpatiMul*' produced, made, or manufactured products, goods, and things. He has in fact coined the word '*UtpatiMul*' (Nepali word for *Sui generis*). The goods, products, or things should be protected with their own '*UtpatiMul Kanoon (Sui Generis)*' laws. In a seminar on IP, held on IP Day i.e. 26th of April 2022, he stated that the word '*Sui Generis*' does not catch the mind and hence our version of word to *Sui Generis* as '*UtpatiMul*' or '*Maulik*' should be used. Admiringly, he also focused on

<sup>42</sup> Ibid, p. 9.

<sup>43</sup> Ibid, p.12.

<sup>44</sup> Blakeney, (n 40).

<sup>45</sup> Melissa A. Loucks, "Trademarks and Geographical Indications: Conflict or Coexistence?" 2012, *The University of Western Ontario*, available at <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2044&context=ctd>, accessed on 3 May 2022.

<sup>46</sup> Binda Acharya, et al., 'Report of the Task Force formed to make more effective work related to' industrial property, 2077, *Department of Industry*, 2020, available at <https://doind.gov.np/reports>, accessed on 2 May 2022.

*UtpatiMul Kanoon*' or *Maulik*' Laws for GI protection in Nepal.

- b. Sikshya Rajya Laxmi Rana (Assistant Professor at Kathmandu School of Law)  
She prefers *Sui generis* GI Laws for the protection of GI in Nepal.<sup>47</sup>
- c. Anish Bastola (Asst. Prof. Kathmandu School of Law)  
He states that there should be both collective mark law and *Sui generis* GI laws for the protection of GI.<sup>48</sup>
- d. Rudra Sharma (IP Author)  
He opted for the Sui Generis GI laws. The IP Policy has remarkable policy concept on GI laws however such policy concept has not been enacted. He primarily stressed on need of new IP laws to materialize the concept as has been envisioned by the policy.<sup>49</sup>
- e. Madhu Soodan Khanal (President of IP Society)  
He presented the ideas on need of *Sui Generis* GI laws.<sup>50</sup>
- f. Advocate Rajkumar Suwal (Associate Prof. Kathmandu University School of Law and one of the stakeholders of Juju Dhau)  
He suggests for the *Sui generis* GI laws.<sup>51</sup>

<sup>47</sup> J In her opinion, collective marks protection is not sufficient, as it provides protection only in the territory of Nepal. However, if there is protection for GI (specifically) under a sui generis method, it will be a platform for protection at the international level following the WIPO exposure for the same. Relatively recent national interest, unaware producers of goods who are not educated on the scope of protection through GI (traditional knowledge holders of certain communities or tribes) are a couple of reasons among others for not having Sui Generis GI laws.

<sup>48</sup> Nepal also needs *sui generis* GI because there are a number of areas and sectors (products) where Nepal could extend the protection through Geographical Indication. A collective mark (registered as a Trademark) is one of the good ways to identify the product/goods and differentiate it from other foods/products. However, the use of "mark" per se does not necessarily reflect the geography of the product or the goods. Therefore, the collective mark directive (under PDTA 1965) is only the basic framework for the immediate relief or action in relation to products for Geographical Indication. Collective marks, although gives the scope of protection are not the core differentiating protection mechanism. Therefore, sui generis laws for the protection of GI is necessary. As immediate relief or action for protection, Collective marks could be used. However, sui generis laws are necessary to protect GIs as this ensures durable, unique, specific, and distinguishing protection mechanisms. Sui Generis Laws are product specific and have special provisions in relation to the specific product in question. As a result, Sui Generis Laws are preferable to Collective Mark Law.

<sup>49</sup> He mentions, the best way to brand the Nepali Agricultural Product is through the GI laws and in Nepal also GI protection creates employment therefore, the laws on GI are necessary. Still, there is administrative difficulty in enacting the laws. The industry ministry has to see the prompt issues first and then the other. As IP is not the only issue or it is not considered as one of the important issues in the department. So, how could it give priority to the GI with its separate section to protect it?

<sup>50</sup> He claims that there is no positive mentality of government officials to make the laws of GI. He had worked in the four phases of the drafting of IP laws but it is not enacted. Therefore, pressure should be given on the government to bring the sui generis GI laws. He even claims that officials are transferred, they cannot give work fully on such acts, which creates the problem in bringing the laws.

<sup>51</sup> He says that there is no authenticity in the *Collective Mark Directive*. As, *Patent, Design, and Trademark Act, 2022* has not recognized collective marks as intellectual property. There might be a problem if someone raises questions about the legitimacy of the directives. Likewise, he even told that GI being the communal rights benefits the entire community and its right transfers from generation to generation whereas, collective right is a personal right or the property under it is the private property and it can be transferred from one group to another other and there may be monopoly where the quality of the product may be challenged. In the case of Juju Dhau also there are high chances of many producers of the Juju Dhau

## g. Suresh Raj Joshi (Director of Industrial Property Section)

Registration of *Juju Dhau* is in the process which is applied by the *Bhaktapur Juju Dhau Business Association*. Law related to GI is in process of discussion in the concerned ministry. *Juju Dhau* should be registered as GI or collective mark discussion is going on inside department and till date, due to unavailability of proper law related to GI, this is also making difficulties. He further said, due to the Linguistic Issue relating to the name of the product that *Juju Dhau* means curd in the Newari language and whether that any product can be identified as a specific product by its name as same as it is which can be termed different in a different language. So, either it should be named *Bhaktapur Juju Dhau* or only *Juju Dhau*.

## h. Engineer Sailaja Shrestha (Engineer in the Department of Industry)

Any product registered as GI in a foreign country is registered as a trademark in Nepal. While registering in Nepal, they need a home registration certificate that is a collective mark or trademark law.

## i. Rakshya Khanal (IP Student)

She asserts that lack of specific legislative protection of Geographical Indication of Nepal is now threatening the existence of GI eligible products thereby pulling these products from being tradable not just in national territory, but also in global market.<sup>52</sup>

The key informant of the IP also focuses on the need and necessity of the *Sui Generis* GI laws in Nepal for the promotion and protection of our goods.

## XI. Conclusion

A geographical indication is an indication that identifies the goods, things, or items has been made in a particular territory, reason, or geography. As per the TRIPs agreement,

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being deprived to use that name. He recommends a better way for the protection of 'Juju Dhau' in Nepal, that will come up with the ideas of reflect on the necessity of Sui generis GIs law. As there is the instance that Basmati has been registered by India, Pakistan, and other countries and it is also produced in Nepal what about Commonly Shared GI Mark it has not been addressed in the international laws too. The problem is there might be questions about the validity of the directives. The directive-led laws are also uncertain. If Juju Dhau is registered as the collective mark then it would be a private right, not the community rights and the rights might be transferred however the GI rights are given to the same community only.

<sup>52</sup> She opines that the government must ensure availability of required infrastructures and make related investment in development of *Sui Generis* GI regimes as this regime can best justify protection of GI. *Sui generis* model is the most appropriate way to avoid losing right over our own origin. To cite an example, despite having ample evidence that Basmati Rice has been originated, produced and consumed in Nepal for centuries, Nepal had to witness how India and Pakistan registered Basmati rice as their Geographical Indication (GI) asserting that the product has originated from their particular places. Research papers that have been published by national and international scientist's states that the Terai region in the south of Nepal is a major area of origin of this rice. Nepal Agricultural Research Council (NARC) has already portrayed the character of different varieties of local Basmati Rice of Nepal with the help of morphology, DNA and isozyme tools. The evidences are submitted to European Council; decision is yet to be made. To emit such issues in the future, a concrete GI Law is must in Nepal.

GI could be protected through the *Sui generis* GI laws or through the collective mark or certification mark or other laws on the GI. Nepal has the Collective Mark laws for the registration of the GI and also the Certification Mark Act and other laws that recognize the GI. However, the researcher in this paper has studied the perception and preference of the GI in Nepal. Regarding the focus of this study the researcher found that the consumer, producer, and retailer all have the perception that *Juju Dhau* has quality and also is unique traditional knowledge has to be promoted through the *Sui Generis* GI laws.

The comparative study of the *Juju Dhau* with the Greek Yogurt clearly stated that the Greek is cautiously protected under the GI thus becoming the generic term. In this pretext, *Juju Dhau* has to be registered particularly through *Sui Generis* GI as the *Sui Generis* GI has the advantages over the collective mark. This suggest the necessity to draft the laws on GI.

Further, the key informant of the GI has stated that there is the necessity of the *Sui Generis* GI laws for the promotion of the GI in Nepal.

*A researcher has presented four arguments highlighting the necessity of enacting sui generis Geographical Indications (GI) law in Nepal. To begin with, Nepal has an abundance of local geographic goods<sup>53</sup>. Also, Nepal Trade Integration Strategy, 2016 has identified nine goods and three services as priority export potentials based on expert performance and inclusive and sustainable development parameters. Secondly, Nepal has committed in international conventions (Paris Convention, TRIPS Convention), to make national laws compatible with international GI laws. Thirdly, Nepal has its laws and policies assuring to adopt the GI laws. Further 'Industrial Enterprise Act, 2076 has defined intellectual properties incorporating geographical indications. Finally, essential cases by High Court, Patan (Highlander Whisky Association V. Highlander Distillery Pvt. Ltd, DN 97, 2076/10/29, and Tea Board of India v. Modern Tea Industries Pvt. Ltd, DN 169, 2077/09/19) has already stated the essence and requirements of GI.<sup>54</sup>*

In the research article titled, '*Evolution of Geographical Indication in Nepal: A Way Forward*' the researcher emphasizes the need for *sui generis* GI laws in Nepal to protect its GIs goods.<sup>55</sup>

The researcher concludes that the promotion of '*Juju Dhau*' specifically requires the implementation of *Sui Generis* GI laws. As the *International Property Rights Index 2020* shows that Nepal is in the 91<sup>st</sup> position in the global ranking out of 129 countries in terms of intellectual property rights protection.<sup>56</sup> Therefore, Nepal should assess the opportunities and risks represented by GIs and the government should produce a comprehensive white paper on the prospects of GIs and the economic viability to

<sup>53</sup> There are 38 location-specific unique crop landraces, 20 popular location-specific crops, 53 geo-linked popular crop landraces along with their important traits, 21 popular geo-linked agro-products, and 8 GI products from Nepal in an international market.

<sup>54</sup> Laxmi Sapkota, 'Necessity of Sui Generis Geographical Indication Laws in Nepal', *National Judicial Academy Nepal*, 2022,

<sup>55</sup> Laxmi Sapkota, 'Evolution of Geographical Indication in Nepal: A Way Forward', *Nepal Bar Council Journal*, Nepal, 2021.

<sup>56</sup> 'International Property Rights Index, 2020', 2020, *Samriddhi Foundation*, available at <https://samriddhi.org/ipri-release-updates/international-property-rights-index-2020-released/#:~:text=>, accessed on 3 May 2022.

maintain a GI system.<sup>57</sup> Nepal has been continuously receiving extensions of deadlines to update or reform its existing IPR laws and policies to meet its commitments.<sup>58</sup> This indicates the apathy of the government and lawmakers towards the importance of the international treaties and conventions signed by the country. Nonetheless, the treaties signed by Nepal is enforceable as any Nepali law<sup>59</sup>.

This research paves the way for further exploration into the necessity of *Sui Generis* GI laws. The next step should involve identifying the potential products in Nepal that can benefit from GI protection. *Sui Generis* GI law is essential for the promotion and safeguarding of GI goods in Nepal.

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<sup>57</sup> Pratyush Nath Uprety, 'Geographical Indications in Nepal: In Search of Identity' *Elgar Publishing*, 2019, pp. 235-266.

<sup>58</sup> For instance, the deadline for implementing the convention for Nepal has been extended thrice. The country, after missing the first deadline in 2006, was provided the period of 2007-2015 to update and reformulate its existing IPR law which has now been extended to 2021.

<sup>59</sup> *Nepal Sandhi Ain 2047* (Nepal Treaty Act, 1990), Nepal, s.9.